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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE VIRGINIA K. DeMARCHI, MAGISTRATE JUDGE

RAJA KANNAN,)
)
)
Plaintiff,)
)
)
v.) NO. 5:17-cv-07305-EJD (VKD)
)
)
APPLE, INC.,)
)
)
Defendant.) San Jose, California
) Tuesday, September 24, 2019

TRANSCRIPT OF OFFICIAL ELECTRONIC SOUND RECORDING
OF PROCEEDINGS

FTR 10:00 a.m. - 1:23 p.m. = 203 minutes

APPEARANCES:

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1 | Tuesday, September 24, 2019

10:00 a.m.

P R O C E E D I N G S

4 **THE CLERK:** All rise. This court is now in session,
5 the Honorable Virginia K. DeMarchi presiding.

6 THE COURT: Good morning. You may be seated.

7 **THE CLERK:** Calling the matter of Kannan versus
8 Apple, case number 17-CV-07305.

9 **THE COURT:** When you're ready, I'll have your
10 appearances, please, starting with the plaintiff.

11 MS. FORD: And looks like the mike is on.

13 **MS. FORD:** Good morning, your Honor. Karen Ford for
14 the plaintiff Roger Kannan.

16 **MR. BOYER:** Good morning, your Honor. Todd Boyer on
17 behalf of defendant Apple, Inc.

18 **THE COURT:** Good morning to you, as well. You may
19 both be seated, and during the argument today, we're doing an
20 audio recording, so it's probably best if you argue from a
21 seated position, so that we can record you. Thank you.

22 All right, so I have five discovery disputes before me
23 today, and some other things that I think are disputes I'm
24 going to put in the miscellaneous category, but we have a lot
25 to get through this morning, and I plan to just go through them

1 essentially in the order in which they were submitted to me;
2 and I have questions for each of you about each dispute, and
3 for the ones where the parties did not make a joint submission,
4 I'll give Mr. Kannan's side an opportunity to address anything
5 in Apple's part of the submission that you weren't able to
6 address, or you feel needs addressing.

7 So let me start with the one that's the question of
8 compliance with my July 11th order. So this is docket
9 number 108, Exhibit 1, and docket number 114.

10 So let me start with you, Ms. Ford, and some questions for
11 your side of the case.

12 First of all, can you tell me how many employees of Apple
13 are within the scope of my July 11th order? My recollection
14 from the hearing last time was there were about nine.

15 **MS. FORD:** Um, I think it depends a bit on what time
16 it is, because they changed a little bit over time, I think,
17 over the years.

18 **THE COURT:** I mean total. So my order said
19 employees who reported to Mr. Kotni during the relevant time
20 period, which was July 1st, 2011 through December 31st, 2018.
21 So how many employees are we talking about?

22 **MS. FORD:** There were five that were the ones that
23 we said had essentially the same job, and then there were two
24 others, I believe, and then there's a third that pops in later
25 on. So that would be five, six, seven, eight. So that would

1 be eight.

2 **THE COURT:** So there's a total of eight employees,
3 okay. Now, I understand that Apple made a further production
4 of documents last week, and so I'd like to understand from your
5 perspective what remains in dispute, and it would be helpful if
6 you could answer that question by reference to the document
7 categories that you put at the end of your submission.

8 **MS. FORD:** Okay.

9 **THE COURT:** So I think there were 10 different
10 categories of documents, so I'm interested in knowing what is
11 still in issue.

12 **MS. FORD:** Okay. With respect to the compensation
13 documents --

14 **THE COURT:** All right, let's go in order, please.
15 It would just be helpful.

16 **MS. FORD:** Oh.

17 **THE COURT:** The first one is e-mails from the stock
18 plan administration to the employees in question reflecting
19 awards and vesting, including "confirmation of approval"
20 e-mails.

21 **MS. FORD:** We received some of those. We are not
22 certain that we received all of them. You have to match them
23 up with other documents that show what stock awards people got.
24 So I believe we don't have all of them, but we did receive some
25 of them last week, yes.

1 **THE COURT:** Okay, Apple says it's already produced
2 information reflecting the RSUs each employee received, both
3 their award -- their certificates and their agreements, as well
4 as the e-mails that you refer to.

5 So is the answer to my question that you're not sure if
6 there's something missing because you haven't had a chance to
7 match it all up yet, or are you sure there is something missing
8 and if there is, what is it?

9 **MS. FORD:** Okay. In part, it's what you just said,
10 that I haven't had time to sit down and match them all up
11 because there's quite a few of them, but just in terms of sheer
12 numbers, it doesn't appear like there would be enough of the
13 e-mails, because the e-mails come out -- the stock awards vest
14 over four years. So if somebody gets a stock award, there
15 should be four e-mails for each stock award, and so if you
16 have, you know, that many employees and you multiply out how
17 many awards that seemed to be, it doesn't seem like we have all
18 of them.

19 Another major issue that is floating around here is the
20 following, that Apple places a dollar amount, a dollar value --

21 **THE COURT:** Okay, we're going to get to that one.
22 I think that's a little bit later.

23 **MS. FORD:** Okay.

24 **THE COURT:** I'm sorry to cut you off, but I'm really
25 just trying to go through this very deliberately, to make sure

1 I understand what's still at stake.

2 **MS. FORD:** Okay.

3 **THE COURT:** So I'm not sure that expressly falls
4 into one of your categories. Okay, so let's just put a pin in
5 that, I'll make a note. I will come back to that issue about
6 the dollar amount, but with respect to this first category
7 about the stock plan administration, you think you don't have
8 all the e-mails.

9 **MS. FORD:** Right.

10 **THE COURT:** Okay, but you do have all the RSU
11 agreements and all of the RSU awards, the certificates.

12 **MS. FORD:** I think so.

13 **THE COURT:** Okay.

14 **MS. FORD:** But again -- can I put a footnote on
15 that? All of these documents tie together, and you can't
16 exactly tell, if they send you 20 RSU certificates, I can't
17 know that's all of them unless I see secondary records from the
18 company that's, like, a summary of how many RSU awards that
19 person got, and right now I don't have that kind of a summary
20 to match it up to.

21 **THE COURT:** Okay, so let's go on to the next
22 category, compensation summaries given to employees. Now, I'm
23 not sure, and maybe Mr. Boyer can answer this question, whether
24 Apple's reference to the myPage records, all right, is the same
25 thing as these compensation summaries.

1 **MS. FORD:** Different.

2 **THE COURT:** Okay. So what are compensation
3 summaries?

4 **MS. FORD:** Each year, when the employees got their
5 performance review -- and Mr. Kotni, their witness, testified
6 to this, and we actually sent them exemplars of ones that were
7 given to Mr. Kannan -- the manager would give the employee a
8 printed-out compensation summary, which included RSUs that were
9 awarded, I suspect for people that had moved up a job level,
10 that would be in there. It would include all the bonuses, and
11 it would include what their base pay was going to be for the
12 coming year.

13 **THE COURT:** Do you have any of those?

14 **MS. FORD:** Didn't get any of those.

15 **THE COURT:** Okay, all right. So now, let's go on to
16 the next category, all pay statements to the employees in
17 question. Now, Apple says it's produced every bi-weekly pay
18 stub for each employee that falls into the category we're
19 talking about. So what is missing?

20 **MS. FORD:** Two things. Number one, I do not believe
21 that they have given -- Apple gives out these pay stub -- like,
22 it's a pay stub, but it's a statement, because they're paid
23 electronically, but a statement that shows exactly what they're
24 being paid and all the deductions and everything, and they have
25 given me those.

1 I believe -- again, that's a lot of pages, and I haven't
2 totally gone through them, but it looks like everything is
3 there for every pay period. And those, again, were stuff I got
4 just very recently.

5 The problem that I have with it, it's been redacted to
6 reduce, er -- to leave out RSU and dividend information.

7 **THE COURT:** Okay, Apple says it hasn't. It's only
8 redacted --

9 **MS. FORD:** And I have a copy of --

10 **THE COURT:** -- the health benefits and all that --

11 **MS. FORD:** I have a copy of one I can show you. If
12 I could be allowed....

13 **THE COURT:** Yeah, go ahead and hand it up. Okay, so
14 there's something that says, "RSU tax offset," "stock purchase"
15 and "post-tax sep life" (phonetic) in the bottom left, or the
16 left column, is that what you're referring to?

17 **MS. FORD:** Actually, that one I'm not certain, but
18 yes, that is redacted, and probably shouldn't be, so that we
19 can figure this document out.

20 But then on the right-hand side, it says, "Other benefits
21 and information," and says, "ESPP rollover, RSU vesting, RSU
22 dividends," and some other categories that I'm not certain
23 exactly what they are, but that's all under Benefits, and it
24 again shows this period year-to-date, and has -- clearly there
25 are numbers in there, and that's income. Those are forms of

1 income that are not reflected on the left-hand side of this
2 statement, and every single one of these statements has been
3 redacted in this fashion.

4 **THE COURT:** Okay. All right, I understand that
5 point now. Okay. So apart from the redactions, though, you
6 have all the statements.

7 **MS. FORD:** The other one that we don't have is,
8 there is a year-end summary statement that they have produced
9 with respect to Mr. Kannan, but with respect to the other
10 people, for some reason, that year-end statement doesn't appear
11 to be there.

12 **THE COURT:** Okay. The next one is all documents
13 reflecting dividends paid, and Apple says it's produced all of
14 those. So what's missing?

15 **MS. FORD:** I don't know that we've received anything
16 that shows dividends other than what I just showed you, but the
17 number's redacted.

18 **THE COURT:** Okay, so let's look at the example you
19 shared with me of the bi-weekly pay statement. What line item
20 would show dividends?

21 **MS. FORD:** I don't know, and when I tried to ask an
22 Apple witness, they couldn't exactly tell me what these line
23 items meant, but I'm presuming that "RSU Dividend" refers to
24 the dividends. I know they do pay dividends, but I --

25 **THE COURT:** So "RSU Dividend" on the right column --

1 **MS. FORD:** Right.

2 **THE COURT:** -- it says, "RSU Dividend EQU." That
3 one?

4 **MS. FORD:** But again, it's sort of cut off there, so
5 I don't --

6 **THE COURT:** Okay.

7 **MS. FORD:** -- I don't know, but --

8 **THE COURT:** Okay.

9 **MS. FORD:** We haven't received anything that I know
10 of that has just dividends listed there.

11 **THE COURT:** Okay. Then the next category is
12 Compensation Calibration Sheets for relevant employees. Again,
13 this is the eight employees. Apple says it has produced all of
14 these and points out that Mr. Kotni had no employees in 2011
15 that reported to him and had only one in 2012. So what is
16 missing?

17 **MS. FORD:** I think we kind of laid it out in our
18 moving papers. They have not produced any more of those since
19 I submitted our moving papers. So that situation remains
20 exactly the same, and that's another one where --

21 **THE COURT:** So you're missing later years. You're
22 not talking about 2011 and 2012. You're talking about the
23 later years.

24 **MS. FORD:** Yeah, I don't think we got any from 2011
25 and 2012, and even if there was only one or two employees, that

1 should be -- you know, should exist, but also, the -- we kind
2 of describe how, for some years, there's a whole lot of this
3 information and then for other years there's not, and it
4 includes both these....

5 The way this document worked, it's like a big spreadsheet,
6 and they --

7 **THE COURT:** What, the Compensation Calibration
8 Sheet?

9 **MS. FORD:** Yeah.

10 **THE COURT:** Okay.

11 **MS. FORD:** A big spreadsheet, have a list of names
12 of employees. It is circulated back and forth between the
13 manager and his immediate manager.

14 **THE COURT:** Um-hum.

15 **MS. FORD:** And they put in there, you know, the
16 ratings that people are getting, anybody that's getting a
17 raise, the bonuses, all that kind of information is put in, and
18 it's a kind of an evolving document, it seems. It gets
19 changed. So it's not an absolute. So if you don't get kind of
20 all of them, it's hard to tell whether you're looking at the
21 last one, which was the real one that went into effect, or not.

22 **THE COURT:** And it's done on an annual basis is your
23 understanding?

24 **MS. FORD:** Well, once a year they go through this
25 process of compensation planning, which involves the

1 circulation back and forth of this calibration worksheet, and
2 we have some of those worksheets, and we have quite a lot of
3 them for a couple of years, but not hardly any for other years.

4 **THE COURT:** Okay.

5 **MS. FORD:** And so I'm just not confident -- well,
6 I'm quite confident that we don't have everything, because it
7 just doesn't make any sense that for 2014 there would be very,
8 very little and then 2016 there would be a lot. It doesn't
9 make a lot of sense.

10 **THE COURT:** Okay. The next item is the Compensation
11 Planning Guidelines for each employee. Apple makes the point
12 that these are really outside the scope of document requests
13 that were issued in my order, but nevertheless, says that it
14 has produced these.

15 So first of all, let me ask you, is there anything
16 missing?

17 **MS. FORD:** I believe that we have Compensation
18 Planning Guidelines for -- again, for some years. I'm not
19 confident that we have all of them, but we do have some of
20 them, and again, they -- the way we get them is that they are
21 attached to these e-mails that are getting circulated amongst
22 management, along with the calibration worksheet, you're going
23 to have these guidelines.

24 Sometimes it's just a written note from managers, and
25 sometimes it's a very formal-looking document. I believe that

1 for only one or two of the years do we have the actual kind of
2 formal-looking document, and part of this was part of the
3 questions that I was going to ask in a 30(b) (6) deposition and
4 what should be there, but it looks to me like less than
5 everything is there.

6 **THE COURT:** So let me ask you, what document request
7 that was at issue in my July 11th order do these fall under?

8 **MS. FORD:** Okay. If you go back to Request number
9 17, which is the basic one that's set out all the stuff, it
10 says, all records, documents and information that reflect,
11 relate or show job performance evaluations and compensation of
12 APS employees reporting to Kotni from 2011 to present, and
13 then, including, without limitation, personnel file, employment
14 history, pay check history, date of hire, job level,
15 compensation, cash bonuses, regards and stock grants, peer
16 feedback ratings, which is part of the performance review
17 process, performance reviews, self-assessment text and ratings,
18 manager's feedback text and ratings.

19 So it's really quite a broad request concerning the
20 compensation process, and --

21 **THE COURT:** Okay, wait. Here, let's just be
22 precise.

23 **MS. FORD:** Yes.

24 **THE COURT:** Because you asked for the compensation
25 of the employees, not the back-end planning that leads up to

1 it. So I want to be real precise about understanding what you
2 think is the hook for you to get these planning documents, as
3 opposed to the actual compensation they received.

4 **MS. FORD:** Because I believe that it is fairly
5 within the scope of the request. When I wrote that request,
6 I had not yet done a deposition or any discovery that allowed
7 me to figure out the calibration worksheets existed or they
8 would have been in there, but --

9 **THE COURT:** No, no, we were talking the Compensation
10 Planning Guidelines, not the Compensation Calibration Sheets.

11 **MS. FORD:** Well, the stuff that talks about
12 performance evaluations, the performance review each year and
13 the compensation review are enmeshed. They are the same
14 process.

15 **THE COURT:** Okay, I'm still skeptical that this is
16 really within the scope of what I ordered. Document number,
17 er -- Request number 17 is the one that you're relying on. But
18 I appreciate your point, so let's move on to the next.

19 "All communications showing the compensation planning
20 process for relevant employees," that's really the same thing,
21 but you want communications about it. Again, would your answer
22 be the same, that it's -- you're relying on Request For
23 Production 17?

24 **MS. FORD:** Yes.

25 **THE COURT:** Okay.

1 **MS. FORD:** And also, the other Request For
2 Production that related to specific named individuals, if you
3 look, like, at Request number 19, it talks about personnel
4 records --

5 **THE COURT:** Yes?

6 **MS. FORD:** -- and personnel records is defined
7 within the requests for production also, and again, I won't --

8 **THE COURT:** Was it defined --

9 **MS. FORD:** -- read it into the record --

10 **THE COURT:** I don't think I have it.

11 **MS. FORD:** -- because it's very long, but it's quite
12 broad.

13 **THE COURT:** I don't think I have that definition.

14 **MS. FORD:** It's part of the request itself, and
15 I believe --

16 **THE COURT:** I know, but nobody attached it in their
17 most recent submission, so it would be helpful if you have it
18 handy. If not, we can come back to it. But you think the
19 definition of personnel records includes e-mails about or
20 communications about compensation planning?

21 **MS. FORD:** Yes.

22 **THE COURT:** I'm just going to make a note about
23 that. All right, the next category is records and spreadsheets
24 showing compensation, stock bonus, dividends for each employee.

25 **MS. FORD:** Um-hum.

1 **THE COURT:** My first question is, what document
2 request requires the production of that information?

3 **MS. FORD:** Again, I --

4 **THE COURT:** And specifically, it's the form of.
5 It's sounds like you're asking for, in particular form, some
6 kind of summary form of this information. So what request does
7 that fall under?

8 **MS. FORD:** Again, I believe it would both be under
9 17 and under -- I know 19 is one of them. I don't know off the
10 top of my head the other numbers that ask for personnel records
11 for these individuals, but again, can I show you a sort of an
12 example here of what I'm talking about in that request?

13 **THE COURT:** Something that's already been produced,
14 you mean?

15 **MS. FORD:** Something that's been produced by Apple,
16 uh-huh --

17 **THE COURT:** Okay, sure.

18 **MS. FORD:** -- with respect to Mr. Kannan.

19 **THE COURT:** Okay, this is a document called "Options
20 and Awards Summary."

21 **MS. FORD:** Um-hum.

22 **THE COURT:** And this is for Mr. Kannan, okay. All
23 right, so what is the significance?

24 **MS. FORD:** And you can see it's got the Bates stamp
25 number in the lower right-hand corner --

1 **THE COURT:** Right, and --

2 **MS. FORD:** -- that was produced by Apple.

3 **THE COURT:** And it's Bates number 384.

4 **MS. FORD:** Yeah.

5 **THE COURT:** So what is the significance of this
6 document for your argument?

7 **MS. FORD:** This is an example of what would be a
8 record or spreadsheet showing and listing compensation of the
9 employees over the years, including base pay, bonuses, stock
10 grants and dividends.

11 **THE COURT:** This one looks like it's only having to
12 do with options and stock.

13 **MS. FORD:** Um-hum.

14 **THE COURT:** So it doesn't look like it's all
15 compensation. So you're suggesting that there's -- there's
16 separate spreadsheets showing the different categories of
17 compensation? Is that what you're -- or are you looking for
18 something that has everything all in one bucket?

19 **MS. FORD:** I would love it if I had everything all
20 in one. I know that the way these get produced is that they
21 have a computerized system called Merlin that they can just run
22 reports from, and I believe this is a report they ran from
23 Merlin with respect to Mr. Kannan. Whether they can change the
24 variables on that, I honestly don't know.

25 **THE COURT:** Okay.

1 **MS. FORD:** But if they can generate this kind of
2 thing for Mr. Kannan, they should be able to generate it for
3 the others, and then we could cross- -- for example, I was
4 saying, I can't tell whether we got all the stock awards. If
5 we had this for those employees, we could look and see if we
6 got something that matches up with every stock award that's
7 listed in these charts.

8 **THE COURT:** Okay, and you're saying you only have
9 this kind of Options and Awards Summary document for
10 Mr. Kannan, and not --

11 **MS. FORD:** That's right.

12 **THE COURT:** Okay.

13 **MS. FORD:** And that's intended as just an example,
14 but you can see the kind of thing we're trying to find.

15 **THE COURT:** All right. The last -- sorry, two more
16 categories. You asked for budget and organization documents
17 showing the groups and numbers of employees reporting to
18 each -- to Mr. -- sorry, to Mr. Kotni. So for each employee,
19 who reported to that employee.

20 **MS. FORD:** Correct.

21 **THE COURT:** And you want both regular employees
22 reporting and contractor employees.

23 **MS. FORD:** Yes.

24 **THE COURT:** So Apple says it's already produced the
25 personnel file, job performance records for each of Mr. Kotni's

1 employees, which is, they feel, within the scope of Request For
2 Production number 17; budget documents and org charts, not
3 within the scope.

4 So let me understand why you think that the budget and
5 organization documents that you are asking for in your motion
6 are within the scope of what I previously ordered.

7 **MS. FORD:** Okay. The -- well, first, of all, to
8 kind of put it into context, they haven't produced personnel
9 files by any means. They've produced performance reviews, and
10 the performance reviews unfortunately do not indicate that
11 information about who reported -- what groups reported or what
12 the people's specific responsibilities were, and --

13 **THE COURT:** Well, those are two different things,
14 I can imagine. So let me just make sure I understand. You're
15 specifically asking for reporting relationships.

16 **MS. FORD:** Correct.

17 **THE COURT:** Okay, now, why is that?

18 **MS. FORD:** Okay, the reason that we're asking for
19 that is that one of the major reasons given by Apple in this
20 case why Mr. Kannan was paid less than the other people is that
21 they claim his responsibilities and the groups -- groups
22 reporting to him was less than the other people.

23 That's their, you know, basis for making this distinction,
24 and my client says that really that isn't true, but we need to
25 have evidence concerning -- discovery concerning what were the

1 responsibilities and what -- you know, who did they evaluate,
2 who did they -- who were they responsible for, who were these
3 groups they were responsible for.

4 Basically, these people were all supervising groups of
5 independent contractors that worked in various places around
6 the world. That's what they all did, but there were some
7 distinct groups within that, and each person would be
8 responsible for certain groups; and so, you know, I've tried to
9 ask the question in deposition, didn't really get much of an
10 answer, looking for documents that would show what the -- you
11 know, who is it, the groups that report -- you know, if you're
12 performing so great and you're getting paid so much --

13 **THE COURT:** Okay.

14 **MS. FORD:** -- for this reason, then who is it that
15 reports to you? What are these groups that they're saying
16 reported to them?

17 **THE COURT:** Okay, so I can see why you're --

18 **MS. FORD:** And I haven't really gotten that for even
19 Mr. Kannan.

20 **THE COURT:** I can see why you're -- well,
21 presumably, Mr. Kannan knows who reported to him. You don't
22 need to get that discovery from Apple.

23 **MS. FORD:** Yeah.

24 **THE COURT:** But with respect to the other employees,
25 I can see why you might want it. I just don't see how you've

1 asked for it. At least if the question before me is your
2 allegation that apple failed to comply with my order, I don't
3 see that in any of the document requests.

4 **MS. FORD:** Okay.

5 **THE COURT:** So is there a document request that
6 you're relying on, that...? I assume that's number 17.

7 **MS. FORD:** Again, I would feel that it either falls
8 within personnel records or number 17. Again, if you looked at
9 what falls within personnel records, it's very broad and
10 detailed.

11 **THE COURT:** Okay, yes, I don't have that in front of
12 me right now, so I can't look at it.

13 **MS. FORD:** By the way, I believe we did attach a
14 copy of the RFP in question.

15 **THE COURT:** Your submission to me in the
16 administrative motion referred to a number of attachments that
17 were not included.

18 **MS. FORD:** Huh.

19 **THE COURT:** I'm sure it was included in the prior
20 order, the prior submission that led to my July 11th order, so
21 I'm sure I have it. I can go back and look at it. At least
22 I'm assuming I have it, but I don't have it in front of me
23 right now --

24 **MS. FORD:** Okay.

25 **THE COURT:** -- is all I'm saying.

1 **MS. FORD:** Would you like me to send you one,
2 somehow?

3 **THE COURT:** I will ask you all if I need it.

4 **MS. FORD:** Okay.

5 **THE COURT:** But first let me just get through this
6 list and then I want to hear from Mr. Boyer.

7 The last category is records showing job levels and
8 promotions through job levels of Mr. Kotni's employees. Apple
9 says it's already produced this material. What's missing?

10 **MS. FORD:** Could you -- could you say --

11 **THE COURT:** The last category in your list is
12 records showing job levels and promotions through job levels of
13 Mr. Kotni's employees, and Apple says it has already produced
14 this material. So what's missing?

15 **MS. FORD:** Okay, what's missing concerning the job
16 levels is -- the only things we got on job levels were fairly
17 recent, okay? And those are reports of some kind out of Merlin
18 that were produced, which, by the way, Ms. Ramirez, who's one
19 of their witnesses, testified this is not an official Apple
20 document that she had ever seen before, but they show a
21 snapshot in time, a given day of the year -- I think it's
22 June 1 of each year -- this was the person's job level, which
23 does show, you know, like, one particular employee and they
24 have one job level June 1st of one year and then a different
25 job level the next year.

1 Nothing about when exactly did they get these job level
2 increases, what was the reason for it, what -- you know, was
3 there some kind of a change in the reporting or anything that
4 had to do with job levels.

5 And again, that's an important part of the case, for two
6 reasons: Number one, because my client claims that he was
7 denied movement up the job level ladder, which he should have
8 had, and second of all, because the job levels are directly
9 tied to compensation issues.

10 So it's an important question for us, and what we have so
11 far, which we just got very recently, were these snapshot
12 documents that say, on a given day of each year, here's what
13 the people's job levels were, but presumably there's going to
14 be documentation, e-mails, records of some kind, that show when
15 each person progressed up the job levels and why, what was the
16 reason.

17 **THE COURT:** Okay, so I understand your point, but
18 I still don't see where that's requested.

19 **MS. FORD:** Oh, in 17.

20 **THE COURT:** Seventeen just asks for job level. It
21 doesn't say, show me the progression through job levels and the
22 particular date and the reason why.

23 **MS. FORD:** Well, I guess by saying from 2011 to the
24 present, showing their job levels --

25 **THE COURT:** Right.

1 **MS. FORD:** -- would indicate to me that you'd want
2 to see the progression over time, during that time frame.
3 I don't see how else one would word it.

4 **THE COURT:** Maybe just as you've done here in court.
5 So you have lumped a lot of things together into this one
6 Request For Production number 17. In retrospect, you might
7 have chosen to do it differently.

8 You know, you've asked me to effectively sanction Apple
9 for failing to comply with my court order. So it is important
10 to me whether that's a sanctionable issue, but I'm also trying
11 to solve problem of, you all are close to the end of your
12 discovery. If there's information that must be produced, you
13 know, I'd like to -- I'd like to engage with you on that point.

14 So if I can paraphrase what your issue is with the last
15 category is that you have received information saying what job
16 levels people had, maybe at the same time of every year on an
17 annual basis, but not how they got there and when they got
18 there.

19 **MS. FORD:** Correct.

20 **THE COURT:** All right. I'm going to now invite you
21 to tell me anything else that you'd like to tell me about this
22 dispute that you didn't include in your opening motion and
23 that, you know, you might need to respond to by virtue of
24 Apple's subsequent submission.

25 And I don't know if that includes -- I see that this

1 summary that you gave me includes this current market value,
2 dollar value, for the stock options and awards. Is that an
3 issue that you want to address at this time?

4 **MS. FORD:** Um-hum. Well, it is one of the problems
5 that have plagued us in terms of this discovery, which is that
6 Apple takes the position, which they argued in their response,
7 that, gee, we gave you these certificates, these certificates
8 that say -- and at that time the initial certificates they gave
9 us had no dollar value. They just said, X number of shares,
10 okay? And they did not have any information about the dollar
11 amount.

12 First of all, Apple absolutely assigns dollar values to
13 each of these RSU awards, and also, with respect to at least
14 some, and it could be all of them, that's looking at it
15 backwards. Apple says, well, you could take the number of
16 shares and then you can go in the stock market listings for
17 that day and you can kind of look up what the Apple stock was
18 selling for that day and you can figure out the value.

19 If you look at the way the awards were, in fact, made --
20 and I can show you one if you're interested -- that it's the
21 other way around. They want to give out a dollar amount and
22 they take that dollar and then compute -- that dollar amount
23 they want to give out and they compute the number of shares
24 based on the value of the stock terms and conditions,.

25 **THE COURT:** So are you only interested in the dollar

1 value of a particular RSU grant when it was made?

2 **MS. FORD:** Well, I want to know when it was made and
3 then, of course, when it vests. Okay?

4 **THE COURT:** Okay, so when it was made and when it
5 vests, what's the dollar amount?

6 **MS. FORD:** Right.

7 **THE COURT:** And why is that relevant to your case,
8 the dollar amount as opposed to the number of RSUs, or the...?

9 **MS. FORD:** Because that's how you compare
10 compensation levels.

11 **THE COURT:** Okay.

12 **MS. FORD:** Okay, what are you earning, right? So
13 for example, right -- and again, I've got additional copies of
14 this, but --

15 **THE COURT:** And let me just -- so I understand the
16 metrics here, I mean, Apple doesn't control the value of a
17 particular RSU when it vests. That's whatever the market says
18 it is. So really, the only --

19 **MS. FORD:** But -- but --

20 **THE COURT:** -- the only relevant metric, from your
21 perspective, I would assume, is what's the value of the RSU
22 when it's awarded.

23 **MS. FORD:** Um-hum. Well, there's two things, and
24 yes, it is important what it is when it's awarded. Apple
25 tracks both, and I've seen documents with respect to Mr. Kannan

1 and a couple with respect to others that do that, okay?

2 The problem with the Apple "you can just look it up
3 yourself" argument is whatever our expert chooses to use for
4 that market value of the stock, I guarantee you Apple will
5 attack it and say they should have used some other value;
6 there's not just one value.

7 Second of all, like I said, if you look at the RSU awards,
8 they say the number of RSUs was determined by dividing your
9 grant value, which is a dollar amount, by the NASDAQ closing
10 price share of Apple, okay? So this is, in fact, a, like, cash
11 bonus or cash distribution more than it is an award of stock.

12 **THE COURT:** So that's at the time of the award.

13 **MS. FORD:** And at the time of the vesting.

14 I believe they get the same e-mail --

15 **THE COURT:** Okay, so what --

16 **MS. FORD:** -- but --

17 **THE COURT:** What is your understanding of what Apple
18 does with the value of the RSUs or the stock at time of
19 vesting?

20 **MS. FORD:** I think they compute a dollar amount for
21 it and they tell the employee what it was. I also believe that
22 it's present in this first thing that we looked at that is the
23 pay stub, because I believe that the employee -- the employer
24 is required to report that dollar amount to the IRS for income
25 tax purposes, and that the employee is required to pay tax on

1 it.

2 **THE COURT:** Okay, I get all that stuff --

3 **MS. FORD:** That's just part of their tax records.

4 **THE COURT:** -- but I'm trying to figure out how it
5 relates to your claim, and it seems like once the RSUs are
6 awarded, whatever the value is, it could be up or down, right?
7 The employee is sort of taking that risk. That's how those
8 things work.

9 Okay, so what I'm trying to understand is, if the actual
10 vesting value, value at time of vesting, is taken into account
11 in the overall compensation process, either in these
12 Compensation Calibration Sheets or the compensation planning --
13 for example, if an RSU vests at a certain point and it's way
14 higher than what it was at the time it was awarded, does that
15 mean the employee gets less of a bonus the next summer?

16 Is it a factor in how compensation is awarded going
17 forward? That's my question, because otherwise, it doesn't
18 seem like it matters. It's just, great, you win or you lose.

19 **MS. FORD:** Well, it matters because it is crucial to
20 calculating the damages, the losses of my client. He says,
21 I should have received an RSU award --

22 **THE COURT:** Okay.

23 **MS. FORD:** -- and here's what I think the value of
24 that award should be.

25 **THE COURT:** But you can make -- so if he says,

1 I should have received an RSU and this and that on this day,
2 you know, or these many RSUs on this day, and by the time I,
3 you know, reached this date, they would have been X value,
4 that's a calculation you can totally make, and it doesn't
5 matter what anyone else did, what anyone else's value is.

6 I mean, you could have a dispute about what the market was
7 or was not at a time, but that's not a discovery problem for
8 purposes of this dispute. That may be something that's an
9 expert issue, but Apple doesn't have any better information
10 than anyone else about what the value is, unless I'm
11 misunderstanding your argument.

12 **MS. FORD:** You are, in a way. Here it says --

13 **THE COURT:** Where is "here?"

14 **MS. FORD:** I'm....

15 **THE COURT:** Okay, so the Court's been handed
16 something that has a Bates number that's cut off, but it looks
17 like it's an e-mail from the Stock Plan Administration,
18 Subject: RSU Grant Confirmation of Approval, dated
19 October 14th, 2015. Okay.

20 **MS. FORD:** And you can see that it says, "Grant
21 Date," "Grant Value," and then number of RSUs.

22 **THE COURT:** Got it.

23 **MS. FORD:** Right? And then it says the number of
24 RSUs was determined by dividing your Grant Value by the NASDAQ
25 price per share. So --

1 **THE COURT:** Yeah, I got that part about the grants.
2 I'm talking about vesting.

3 **MS. FORD:** The same kind of e-mail comes out --

4 **THE COURT:** Okay, all right. I think I --

5 **MS. FORD:** -- with each of the vesting things, and
6 I think if Apple has documents which assign dollar amounts to
7 these RSU shares, then that's quite relevant to our discovery
8 in this case, and I don't see any legitimate reason why Apple
9 should be able to refuse to produce those documents on the
10 theory that somehow we could look it up through some other
11 source, which, like I said, they no doubt --

12 **THE COURT:** Have you asked for those documents
13 specifically --

14 **MS. FORD:** -- can challenge. Yeah.

15 **THE COURT:** -- in a document request?

16 **MS. FORD:** Sure.

17 **THE COURT:** Not number 17, which I don't consider a
18 specific document request for these. Have you asked for that
19 specifically?

20 **MS. FORD:** You don't consider 17 --

21 **THE COURT:** I don't consider 17 a specific request
22 for the dollar value of RSUs upon grant and upon vesting, no,
23 I don't. So let me just ask you, is there a specific request,
24 other than 17, that you've asked?

25 **MS. FORD:** I don't think there's any request that

1 has the words "dollar value" in it.

2 **THE COURT:** Okay, something more specific that says
3 you don't want to just know how many RSUs someone got, but you
4 want to know what the dollar value was at different points in
5 time.

6 **MS. FORD:** Like I said, I don't think that --

7 **THE COURT:** Okay.

8 **MS. FORD:** I don't think we even would have thought
9 to draw that distinction --

10 **THE COURT:** That's fine. I just want to know.

11 **MS. FORD:** -- between the number of shares --
12 I mean, it also doesn't say we want to know the number of
13 shares. It says we want to know the stock awards. We want all
14 the documents that relate to the stock awards.

15 **THE COURT:** Yeah, I mean, I get that you've tried to
16 draft this broadly, all records, documents, information which
17 reflect, relate to or show, and then you have a big, long list.

18 **MS. FORD:** Um-hum.

19 **THE COURT:** The danger of this kind of request,
20 especially in the context where counsel are not cooperating
21 with each other, is that you get into fights about where to
22 draw the line about, you know, does it reflect, relate to or
23 show.

24 Usually this is not a problem because people figure out
25 what's actually relevant to the case, and they don't want to be

1 in front of me fighting about it all the time, and they just
2 work it out.

3 You all haven't done that. So let me just put a pin in
4 that, because we're going to talk about that at the end, but
5 I'm just trying to understand, if we're fighting over a request
6 for production of documents that is actually covered someplace
7 else in your requests for production, I don't want spend any
8 more time on it, but if I have to -- if I have to parse whether
9 these kind of documents that you share with me fall into the
10 category of "reflect or show" awards, and whether that includes
11 the dollar value of such awards, I'll do that, I'll make that
12 judgment, but I don't want to spend more time on it if it's
13 already covered.

14 So let me just pause there. Sounds like it's not already
15 covered specifically. At least you can't identify another one,
16 another document request that covers that, so we can move on to
17 anything else that you needed to respond to we haven't already
18 covered from what Apple submitted with respect to this dispute.

19 **MS. FORD:** I think we've -- I'm trying to remember
20 all the things we said here, but yeah, I think that pretty much
21 covers it, yeah.

22 **THE COURT:** Okay. So let me turn to Mr. Boyer.
23 I want to go through the same process. I want to find out --
24 you've heard now what Ms. Ford has said about what she feels is
25 missing. She's given me examples of documents that she says

1 your client has that she thinks are relevant and within the
2 scope of the production. Whether or not they were ordered or
3 not, you now understand why she wants them. So I'd like to go
4 through each one and understand what Apple's position is.

5 So we're talking about the first category -- first of all,
6 are there eight employees, total?

7 **MR. BOYER:** That's correct, your Honor.

8 **THE COURT:** Okay, does that include Mr. Kannan or
9 are those in addition to Mr. --

10 **MR. BOYER:** In addition to.

11 **THE COURT:** In addition. So Mr. Kannan plus eight
12 employees, okay. So we have e-mails from the Stock Plan
13 Administration to the employees in question reflecting awards,
14 and vesting, including these Confirmation of Approval e-mails,
15 and it sounds like from what Ms. Ford is describing, it's the
16 Confirmation of Approval e-mails that she thinks are
17 principally missing.

18 So are they missing? Are there still more?

19 **MR. BOYER:** It's my understanding, your Honor, that
20 we have produced all of them, and I think there is a
21 miscommunication between the initial grant e-mail, which is
22 what she provided the Court already, and which I also have some
23 examples of if the Court would like to see, and then another
24 e-mail every year when the stock vests, and I have not seen
25 something like that, so I'm not sure. That's new to me.

1 So initially, when we had the Court's order, we produced
2 the actual Stock Notice of Grant Award Agreements, and I have a
3 copy of that here, if the Court would like to see.
4 Specifically, it shows the number of units subject to the
5 award, the date and the vesting schedule.

6 And so what I, through the meet-and-confer process,
7 stating with Mrs. Ford that, look, the actual value on that
8 given date is calculated based on the market. And so once an
9 employee gets a number of shares, you know, over four years,
10 you divide the number of shares that were issued as part of the
11 award, and the value on any given day is subject to, as the
12 Court has noted, the market price.

13 **THE COURT:** So I'm looking at this Options and
14 Awards Summary, which is the document number 384 that Ms. Ford
15 handed to me. This is for Mr. Kannan. Has Apple produced
16 documents like this for each of the eight employees?

17 **MR. BOYER:** No, we have not, your Honor.

18 **THE COURT:** Okay, why not?

19 **MR. BOYER:** Frankly, I wasn't aware this was an
20 issue, but it does show the vesting schedule. One of the
21 issues that has come up in a number of the meet-and-confer
22 efforts is that additional documents got produced by Mr. Kannan
23 saying, oh, we would like it in this form or this form, and
24 we've produced it in the forms that are available.

25 In fact, these Stock Administration e-mails we had to go

1 back and essentially recreate, because they go out to the
2 employees at the time but are --

3 **THE COURT:** No, I got that point. I'm talking about
4 this Options and Awards Summary. This doesn't look like
5 something -- it's either something that you can print out of a
6 system, according to Ms. Ford, or it's something that was
7 created contemporaneously with the time that was shared with
8 the employee. I'm not sure which, and it kind of doesn't
9 matter.

10 But here's my point to you, Mr. Boyer:

11 **MR. BOYER:** Yes, your Honor.

12 **THE COURT:** So if you take a request like number 17,
13 and I'm sure Apple is very familiar with these kinds of
14 requests, "Please produce all records, documents and
15 information which reflect, relate to or show," and then the big
16 long list. So it's not a "sufficient to show." It's "all
17 records that relate to, reflect or show."

18 So, you know, I can see Ms. Ford's point that a document
19 like this Options and Awards Summary is within the scope of RFP
20 number 17. Even if it -- the request didn't require you to
21 produce something that said, okay, and these -- the current
22 market value of these RSUs is A, which I agree it does not,
23 nevertheless, this is a document within the scope of RFP
24 number 17, I think we would all agree.

25 So you're the only one who knows what documents you have.

1 Ms. Ford says that she's been handing you examples of the kinds
2 of documents that she's seen or knows about, and is asking for
3 them for the eight employees.

4 This is a small number of employees to have to do this
5 for. So, you know, I continue to believe that part of the
6 problem here is that you are not talking to each other, or if
7 you are, you are not listening to each other. I shouldn't have
8 to have this conversation about whether -- if this document is
9 available for each of the eight employees, why isn't it
10 produced? This is something you can do in five minutes.

11 Unless there's something I'm not understanding, these
12 documents aren't generated for each employee, they're never
13 generated, they just happened to be generated for Mr. Kannan
14 specially, and it's really hard to do, I mean, I'm not hearing
15 any of those things.

16 And perhaps this is the first time you've seen this
17 document, which again would cause me some concern, that you all
18 are not talking to each other.

19 **MR. BOYER:** One point, if I may, your Honor --

20 **THE COURT:** Yes, please.

21 **MR. BOYER:** I apologize, and I understand the
22 Court's frustration. I note that there are different systems
23 between what an employee may or may not get, depending on what
24 country they're in. He's in India right now. This is a form
25 that was -- looks like it was given to him in India. If Apple

1 can create these for the other employees, then I would agree
2 with the Court, then yes, we will absolutely produce it.

3 **THE COURT:** Okay. Now, the Confirmation of Approval
4 e-mails, you represent that you have produced, recreated all of
5 these. Have you?

6 **MR. BOYER:** That's my understanding, your Honor,
7 yes.

8 **THE COURT:** Okay, because one of the things I was
9 thinking of doing today -- I'll just preview this for you, so
10 you can think about how to conduct yourself -- is I can't tell
11 from your submission, and I don't give you enough space to do
12 this, whether someone's not being candid with me, someone
13 doesn't actually -- hasn't really looked at the production that
14 they've received or provided to know what's in there, or maybe
15 you really haven't conferred and you're talking past each
16 other, or maybe all of those things are true.

17 So one thing I was thinking of is asking Apple to prepare
18 a log of all the documents that it has produced that fall into
19 these categories, and file it with the Court and serve it on
20 Mr. Kannan, and if it turns out that what you say in your
21 submission is accurate and you have, in fact, produced all
22 these things for all the employees for all the relevant years,
23 then Mr. Kannan will pay your fees for having to do that. If
24 it turns out that you haven't done it and you're like, oops,
25 I missed, maybe we have some things we have to produce, then

1 you'll pay Mr. Kannan's fees for having to bring the motion.

2 Now, I'd rather not have that happen. I'd rather have us
3 all, like, figure it out here, get it done, and have you go on
4 your way. But I am concerned that because of the late date and
5 the fact that you don't really seem to be talking to each
6 other, that we have an ambiguity here that's going to take time
7 to resolve, because I can't tell who's right and who's wrong.

8 Okay?

9 So we're going to do some examples. So sorry for the
10 digression there, but that was what I was thinking when I got
11 your papers, is that this is the only way to resolve this, if
12 you really want to resolve it that way.

13 I want to understand, though, Apple's position, because
14 I've spent a lot of time with Ms. Ford going through
15 Mr. Kannan's position. So let's go on to the second category,
16 which is compensation summaries.

17 Okay, now, I don't think I have one of the compensation
18 summaries, but I know you've seen it, Mr. Boyer.

19 **MR. BOYER:** Yes, your Honor, I have.

20 **THE COURT:** All right. Are these the same thing as
21 the myPage records you refer to?

22 **MR. BOYER:** They are not, your Honor.

23 **THE COURT:** Okay.

24 **MR. BOYER:** So compensation summaries are documents
25 that exist in a limited period of time. So what happens is

1 that during the compensation and review process, which happens
2 around September and October of each year, once that is finally
3 set, each manager has access to essentially print out these
4 summaries.

5 Once the compensation discussion happens with the
6 employee, and that certain period of time passes, which
7 I understand is about 30 days or so, that essentially that
8 document goes away. The raw data is available, as of course,
9 within the pay stubs and the HR documents that we produced, but
10 they do not exist in that particular form, unless the employee
11 has retained it, which I believe Mr. Kannan has.

12 Now, the myPage summaries are a little different, and
13 this, again, highlights the difference between the, say, Indian
14 employee access and the US employee access. He using an alert
15 system right now to obtain --

16 **THE COURT:** Mr. Kannan is?

17 **MR. BOYER:** Yes, correct, to obtain this data, which
18 we do not have, or the employees do not have access to. So
19 there's this summary they can print out, and that's an older
20 system in India that they're using, but here it's just in the
21 data form that we've produced it in.

22 And I understand that counsel wants it in a spreadsheet
23 form. I mean, internally, we have compiled all these
24 documents, put it in a spreadsheet, because we do not have some
25 master spreadsheet that came from Apple that we're looking at.

1 We had to do it from the documents as well.

2 **THE COURT:** You mean the lawyers did it?

3 **MR. BOYER:** Correct.

4 **THE COURT:** Okay. All right, so -- and let me just
5 make sure I understand. The Apple affiliate that Mr. Kannan
6 currently works for, which is not a party to this case, you're
7 saying that Apple, Inc. here doesn't have access to whatever
8 Apple India has.

9 **MR. BOYER:** The form in which an employee would see
10 it is different. The data is the data.

11 **THE COURT:** Okay.

12 **MR. BOYER:** And yes, we have the access to it, and
13 it's been produced, in various forms, but the way it looks to
14 someone in India when an employee actually accesses their own
15 personal data is different than it is in the United States.

16 **THE COURT:** Okay. So let me just ask a question,
17 and I'm not suggesting that this is something you were required
18 to do in order to satisfy my prior order or the request, but
19 how hard would it be for each of the eight employees to
20 produce, in summary form, the information that Ms. Ford is
21 asking about? Is it a manual recreation of data, or is it a
22 spreadsheet query -- you know, a database query that can be
23 outputted in a spreadsheet?

24 **MR. BOYER:** There -- well, so, could it be put in a
25 spreadsheet? Yes, but there would be some manual work involved

1 in it.

2 **THE COURT:** Okay.

3 **MR. BOYER:** It would not be an automatic download
4 into a spreadsheet.

5 **THE COURT:** All right. What do the myPage records
6 include?

7 **MR. BOYER:** So they would generally include
8 compensation and bonuses. I think -- I think that's generally
9 it, and the dates of the -- of any pay increase.

10 **THE COURT:** RSU grants, as well?

11 **MR. BOYER:** I don't know if that's in the myPage.

12 **THE COURT:** Okay. Let me ask you about the -- so
13 the next item is the -- all pay statements to the employees in
14 question. Apple says it produced every single pay statement on
15 a bi-weekly basis. I now have an example that shows redactions
16 for things that look like they're within the scope.

17 I get that you don't want to include people's health
18 benefits or things like that which aren't relevant to the case.
19 I get that, but RSUs are very relevant to the case.

20 So why are there the redactions that are reflected in
21 this -- this particular document from Mr. Kandakar (phonetic)?

22 **MR. BOYER:** That's -- so actually, your Honor, we
23 have produced the year-end summaries with these unredacted, and
24 I have an example of that, but of course, again, we're trying
25 to preserve the employee's privacy. If the Court feels -- if

1 the Court feels that the redactions are inappropriate, we're
2 certainly willing to unredact it and produce it under the AEO,
3 but I have another example just to show that information --

4 **THE COURT:** Okay --

5 **MR. BOYER:** -- is available.

6 **THE COURT:** -- let me see, is it the year-end
7 summary?

8 **MR. BOYER:** Yes.

9 **THE COURT:** If I can see a copy of that, that would
10 be great. All right, so I've been handed a year-end summary,
11 which is labeled 4010. Okay.

12 So let me just briefly ask Ms. Ford, it seems like the
13 redactions are consistent with, or rather, they are not matters
14 redacted in this year-end summary that would cause you concern.
15 Is that -- do you agree?

16 **MS. FORD:** I can't agree with that formally at this
17 point, because I don't know what some of them refer to, but
18 this particular document does have the redaction taken away for
19 the RSU vesting line item and the RSU dividend item.

20 I would take the position all of those are income or
21 compensation items. Those are all income items, and so they
22 should all -- there's no reason to redact any of them.

23 **THE COURT:** Okay. But the dispute that you have
24 with Apple on Mr. Kannan's behalf is not about whether he got
25 more or less health insurance, dental, vision coverage. It's

1 about whether he got bonuses, RSUs and compensation awards that
2 were less than what he felt he would deserve, right?

3 **MS. FORD:** Correct, and the insurance and everything
4 is on the left-hand side, and I don't have problems with that.
5 What I do have a problem with is the -- the items on the
6 right-hand side, which is other benefits and information, which
7 those are, I believe, actual, you know, things of dollar value
8 that were forms of compensation that those people received,
9 okay? And I notice that they did also unredact the RSU tax
10 offset, which is something I will need to find out what that
11 means. I'm not sure what that means.

12 **THE COURT:** All right, well, presumably, you have
13 deposition testimony about these things, or can obtain it.

14 **MS. FORD:** No, I have not been able to get it,
15 because of the 30(b) (6).

16 **THE COURT:** Okay, I know it's another issue, but it
17 is possible to obtain deposition testimony about what these
18 things are, right?

19 **MS. FORD:** Yes, it is.

20 **THE COURT:** All right. So why is it important --
21 what does the year-end summary not show that would make it
22 necessary to show bi-weekly statements?

23 Mr. Boyer, is there -- it looks like the actual
24 information is the same, and perhaps even more comprehensive,
25 on the year-end summary.

1 **MR. BOYER:** That's right, your Honor. So bi-weekly
2 statements wouldn't show particular forms of compensation to
3 the extent they were given in a particular pay period. So one
4 might be given, you know, on June 12th, 2015 and that would
5 show up in the year-end statement.

6 **THE COURT:** Okay.

7 **MS. FORD:** And, can I...?

8 **THE COURT:** Why do you need bi-weekly statements?

9 **MS. FORD:** Because the year-end does not -- it
10 doesn't divide out the RSU vesting in any way, and there's
11 several different kinds of RSUs and they vest at different
12 times, and also, when the awards are made, it's like somebody
13 gets a promotion and they get a bunch of RSUs affiliated with
14 that promotion, you wouldn't be able to pull that out of this
15 RSU vesting amount. I'm not saying that this is irrelevant or
16 useless. It's not irrelevant or useless. It's just not the
17 entire picture. And so by --

18 **THE COURT:** But presumably, you --

19 **MS. FORD:** -- the bi-weeklies get you a step closer
20 to figuring out whether or not you're getting the accurate
21 picture on the RSUs.

22 **THE COURT:** Presumably, you could get that
23 information from -- the RSU award from this Options and Awards
24 Summary that we just talked about, the one that Mr. Kannan has
25 that Mr. Boyer represented could be provided for the other

1 eight employees.

2 **MS. FORD:** You're talking about the --

3 **THE COURT:** 384?

4 **MS. FORD:** Yes, the spreadsheet that's 384.

5 **THE COURT:** All right, okay.

6 **MS. FORD:** That would presumably have, you know,
7 some of that information in it, yeah.

8 **THE COURT:** Okay. So now going on to the next one,
9 Mr. Boyer, all documents reflecting dividends paid, now,
10 Ms. Ford says that she has no information about what dividends
11 were paid. You say it's been produced. So how am I to resolve
12 that?

13 **MR. BOYER:** It is -- it should be reflected on that
14 year-end statement, your Honor.

15 **THE COURT:** Okay, so where would I find it on the
16 year-end?

17 **MR. BOYER:** Should be --

18 **THE COURT:** RSU Dividend EQU, right column?

19 **MR. BOYER:** I believe so, your Honor. Yes.

20 **THE COURT:** Okay. All right, now, going on to these
21 Compensation Calibration Sheets, for the relevant employees, so
22 again, this is a situation where Ms. Ford says she doesn't have
23 them, or most of them are missing. You say they've all been
24 produced. Have they all been produced?

25 **MR. BOYER:** With the exception of 2011, there may be

1 one or two e-mails that I understand that we're in the process
2 of getting together, but we've checked all of the relevant
3 sources. We've checked Mr. Kotni, who was obviously performing
4 in the evaluation of his own employees, and his manager, Rahul
5 Rastogi, we've produced those as well.

6 So some of them were produced just recently, and I'd also
7 argue that those were not necessarily within the scope of the
8 Request For Production and the Court's order, but we wanted to
9 obviously do what we could to show that we were trying to
10 comply in good faith.

11 So what we've done is provide everything -- we have
12 asked -- I specifically sat down with Mr. Kotni to go through
13 these e-mails and get the ones that are related to compensation
14 for his team and produce them.

15 **THE COURT:** Mr. Kotni's still an employee of the
16 company?

17 **MR. BOYER:** That's correct.

18 **THE COURT:** Okay, and are these not kept in some
19 central place, or are they -- each manager has the calibration
20 sheets?

21 **MR. BOYER:** That's correct, your Honor.

22 **THE COURT:** Okay. So your representation is that
23 apart from some e-mails about them, or that attach them, you
24 have searched for and have not found any additional
25 Compensation Calibration Sheets.

1 **MR. BOYER:** That's correct, your Honor. With the
2 exception of 2011 and '12, I don't actually think they're
3 Compensation Calibration Sheets, but what I think they are is
4 the guidelines for those particular years that they're looking
5 for.

6 **THE COURT:** So the Compensation Planning Guidelines?

7 **MR. BOYER:** Correct.

8 **THE COURT:** Okay, and it sounds like the parties
9 talk about these things in sort of overlapping ways. So I'm
10 not sure if these are discrete documents or they're kind of
11 related documents.

12 With respect to the Compensation Planning Guidelines,
13 Ms. Ford says she has these documents for some years but not
14 for others. So are there still more to be produced? You're
15 still looking?

16 **MR. BOYER:** For 2011 and '12, your Honor.

17 **THE COURT:** Only 2011. Okay, now, she's noted a
18 disparity that there are some, like, a lot of them for 2016,
19 not very many for 2014. How do you account for that?

20 **MR. BOYER:** There may have just not been as many
21 communications, but the guidelines were produced for those
22 years, so they were --

23 **THE COURT:** Are the guidelines a discrete -- like,
24 is it a discrete document on an annual basis, and then there
25 are e-mails about them?

1 **MR. BOYER:** That's correct, your Honor.

2 **THE COURT:** So has Apple produced the guidelines
3 document, not the e-mails, but the guidelines document, for
4 every single year, 2011 through 2018?

5 **MR. BOYER:** So not 2011 and 2012, your Honor. We
6 are in the process of doing that now.

7 **THE COURT:** Okay, and why weren't those produced
8 earlier?

9 **MR. BOYER:** Probably an oversight on my part,
10 frankly. I didn't -- because, one, he was -- well, a number of
11 reasons. One, we had a dispute as to whether or not they were
12 actually requested, but secondly, I do not believe we went over
13 those specifics, because Mr. Kannan did not report to Mr. Kotni
14 at that time.

15 **THE COURT:** I see.

16 **MR. BOYER:** So again, pursuant to counsel's request,
17 we did go back and we did find those, and we'll be producing
18 those in the next day or two.

19 **THE COURT:** Okay. I'm going to skip over, because
20 we've already talked about it, the communications showing
21 compensation planning, because that's been encompassed in our
22 discussion.

23 There's a request for records and spreadsheets showing
24 compensation, stock bonus, dividends for each employee. My
25 sense is from Ms. Ford is that she's looking for something that

1 allows easy comparison between and among the eight employees
2 plus Mr. Kannan that worked for Mr. Kotni.

3 Is there such a document that exists or can be output from
4 a query to a database?

5 **MR. BOYER:** Not that I'm aware of, not that includes
6 all of those various compensation --

7 **THE COURT:** Some subset of them?

8 **MR. BOYER:** -- levels. Yes, and we have produced
9 some of that in the form of the payroll records and in the --
10 the HR documents, but -- as I said, we manually did this
11 internally to create our own spreadsheet, but I will check with
12 Apple to see if there's some way that a -- an automated system
13 that would download everything into the spreadsheet that would
14 be easier for everyone. It's my understanding that there's a
15 lot of manual processing there.

16 **THE COURT:** So I'm not going to ask you to do
17 anything that's not, you know.... So if you have a database
18 and it can be queried and you can have an output, that's a
19 document kept in the ordinary course of business. If you have
20 to do manipulation of it, you have to do manual entry, not a
21 document kept in the ordinary course of business.

22 I mean, in some cases the question comes up, should
23 I give, you know, your adversary access to the database. I'm
24 not going to do that here, because there's lots of other
25 things, I'm sure, in the database that are not at all relevant

1 here, but if you can query a database and get some subset of
2 the information, do another query and get another subset of the
3 information that allows both parties to see it in summary form,
4 I think you should do that.

5 Let's say it's not specifically called out for in the
6 Requests For Production. I think it's going to make
7 everybody's life easier, and certainly if it's something that
8 you're going to rely on -- I don't mean your own work product,
9 but it's something you're going to rely on in the case, you
10 should produce it. You should just do it.

11 **MR. BOYER:** Okay.

12 **THE COURT:** So that's my suggestion to you about
13 that. It sounds like that's possible. At least you're going
14 to inquire and see if it's possible.

15 **MR. BOYER:** Yes, your Honor.

16 **THE COURT:** All right. Now there comes the issue
17 about documents essentially showing who reported to the
18 employees in Mr. Kotni's group.

19 So again, I can see how you might think the performance
20 reviews, I produced those, the peer evaluation, I've produced
21 those, if these things are silent about who reported to whom
22 and a key issue in the case is Mr. Kotni had fewer employees
23 reporting to him, these other people that we think are not
24 similarly situated had way more or more important employees
25 that are reporting to them, that's a key issue in the case,

1 you're going to need to make that showing.

2 That's going to be part of your defense. So why not show
3 that information? If you're going to need to rely on it, why
4 not show that information with Mr. Kannan?

5 **MR. BOYER:** That's correct, your Honor, we are
6 actually going to do that. We're in the process of getting --
7 gathering that right now.

8 **THE COURT:** Okay. I would urge you to do that,
9 because I just think that there's -- there's no way you're
10 going to get to use it unless you provide it, so....

11 **MR. BOYER:** I totally understand, your Honor, and
12 I agree with you. This just came up a few weeks ago and we
13 inquired as to whether we could get this. So again, this is
14 not something that's -- we have to actually run a program
15 internally to pull the number of contractors that reported to
16 each employee, and it's going to be in a snapshot in time.
17 We're going to do it on a quarterly basis.

18 And so, again, not a document that exists, but we have to
19 run a query to get it, and we are doing that, and we've agreed
20 to do it.

21 **THE COURT:** Okay, that's great. So I'm not going to
22 worry about the definition of personnel records, because it
23 sounds like you've agreed to do it anyway. Okay.

24 **MR. BOYER:** And if I could adjust one more thing,
25 your Honor?

1 **THE COURT:** Sure.

2 **MR. BOYER:** Sorry to turn it up.

3 **THE COURT:** Yeah.

4 **MR. BOYER:** The thing is, we're going to produce
5 this, but I don't want another request saying, okay, now, we
6 want the budgetary numbers, we want this.

7 **THE COURT:** I don't see how budget numbers matter.
8 I really don't.

9 **MR. BOYER:** I agree, your Honor.

10 **THE COURT:** I mean, I get that the number of -- if
11 it's a key issue in the case, this is one of the
12 differentiations, like, Mr. Kannan only had a few and other
13 people had more and that's why these other people were
14 compensated more, given more bonuses or whatever, that seems
15 like it's a legitimate issue.

16 I don't understand why the budget has any relevance here.
17 It's not part of the request, it's not supported in the
18 submission that Mr. Kannan made. So I'm going to move past the
19 budget.

20 All right. So now, the last information is, some
21 information showing how people moved up and what -- when people
22 moved up, to these job levels. So this one, again, Ms. Kannan,
23 er -- Mr. Kannan suggests that Merlin would reflect -- you
24 could, you know, query this Merlin system to identify at what
25 point in time these different job level classifications were

1 changed.

2 Is that something that's readily accessible?

3 **MR. BOYER:** It is, and we have produced it in
4 another form. Again, the dates of the particular promotion are
5 available on a particular document that -- it's somewhat
6 difficult to read. I'll again inquire, since we're going to go
7 back and look at the entire package together, as to whether or
8 not that can be added to the entire --

9 **THE COURT:** So what is the document you're referring
10 to? Because you're saying you already produced the job level
11 classifications, and I -- I don't think Ms. Ford is disagreeing
12 with you. She's just saying, well, that's a snapshot at a
13 particular point in time. I can't tell if that person just got
14 that job level promotion, or whether they got it 11 months
15 before the snapshot.

16 **MR. BOYER:** Yes, your Honor. It's these work
17 information documents that I think -- and I actually have a
18 particular cite to one where it actually shows it.

19 **THE COURT:** Okay.

20 **MR. BOYER:** It's Bates 4933. I actually don't have
21 it with me --

22 **THE COURT:** Okay.

23 **MR. BOYER:** -- but I can show it electronically. It
24 shows the particular position, and current as of the new
25 position, and -- I'm sorry -- the old position, and the

1 "effective as of" date is the new position, and --

2 **THE COURT:** And what's that document called, what
3 kind?

4 **MR. BOYER:** So it's called the Work Information.
5 I have an example here. It's just --

6 **THE COURT:** Work Information document?

7 **MR. BOYER:** Yes.

8 **THE COURT:** And have you produced all of those for
9 each of the eight employees plus Mr. Kannan?

10 **MR. BOYER:** The eight employees, yes, your Honor.
11 Mr. Kannan, I don't know if we produced it for him.

12 **THE COURT:** Okay, but basically you're saying you've
13 produced this kind of document which shows the change and when
14 it happened for each of the eight employees.

15 **MR. BOYER:** That's correct.

16 **THE COURT:** Okay, that seems good enough.

17 Ms. Ford, what's the problem with that document?

18 **MS. FORD:** That's -- at least from what I could see
19 looking at those documents, that's not what they are at all.
20 They are just a snapshot in time, like I said, a random date,
21 maybe it's 6/1 of a given date, and all the employees, it seems
22 to be the same date in a given year, and generally is June 1.

23 **THE COURT:** Have you all talked about the meeting --
24 the job level classifications are made at the same -- the
25 changes are made at the same time of year. That wouldn't be

1 too surprising.

2 **MS. FORD:** But that wouldn't really make sense,
3 because the performance evaluations all take place as of
4 October 1. So having a June or May date really doesn't
5 correspond to that --

6 **THE COURT:** Have you all talked about this?

7 **MS. FORD:** -- particularly. Yes, in a way, yes.

8 **THE COURT:** Okay. You need to talk about this one,
9 because it sounds to me like Mr. Boyer is representing that the
10 documents show the effective date of the job level
11 classification, which is exactly what you want, and if that's
12 not true --

13 **MS. FORD:** I don't believe it is.

14 **THE COURT:** -- then he'll need to find the
15 information for you, but it sounds like you already have it,
16 and it may just be a question of interpreting a document,
17 right? So --

18 **MS. FORD:** I --

19 **THE COURT:** -- if you haven't talked about it, you
20 can't possibly know, right? If you have an example of it, I'm
21 happy to look at it. Do you have an example of one of these?

22 **MS. FORD:** I don't have a paper example to hand you.

23 **THE COURT:** Okay.

24 **MS. FORD:** No. One could be provided, but like
25 I said, the reason why I'm thinking this is not -- it says --

1 it will have a whole lot of information, a person's name, their
2 base salary, their job title, which includes their job level,
3 and then it will say, effective date is June 1, two thousand --
4 that means, this is accurate information as of that effective
5 date. It doesn't mean that that's reflecting that some change
6 in their job level took place on that effective date.

7 **THE COURT:** Well, here's what -- if you continue to
8 disagree about this point, this is a question you get to ask a
9 30(b) (6) witness in a deposition, and if it's not true, then
10 Apple has to fix it.

11 **MS. FORD:** Okay.

12 **THE COURT:** Okay? All right. Okay, so I think
13 we're at the end of the categories.

14 Mr. Boyer, is there anything else that you'd like to add
15 to your part of the argument?

16 **MR. BOYER:** No, your Honor.

17 **THE COURT:** Okay, so here's my take on this, is that
18 there's still some things missing. There's some things that
19 weren't clear that needed to be produced that arguably are
20 relevant to the case and should be produced. Again, I come
21 back to my same point, which is, I think you all have not
22 talked carefully through these issues.

23 I think we have agreement about what's going to happen
24 with respect to these categories, or rather, I'm going to order
25 it to happen, but I also am mindful of the fact that you all

1 are here and is a good opportunity for you to talk.

2 So there may be other things to talk about, but at the end
3 of the hearing, I'm going to invite you to use my jury room and
4 sort out any details that need to be sorted out about who's
5 going to produce what to whom, but let me just go through what
6 I think needs to happen.

7 All right, so I'm going through all the list of document
8 categories.

9 So with respect to the first category, the e-mails from
10 the Stock Plan Administration, for this one, Apple is going to
11 see if it can -- Apple is going to, unless it's not available
12 for employees not in India, provide the Options and Awards
13 Summary for each of the eight employees that reflect their RSU
14 grants; and if there are any Confirmation of Approval e-mails
15 that haven't been produced, they can be produced at that time.

16 With respect to the compensation summaries for the given
17 employees, I'm not going to order any further production based
18 on Apple's representation that all of the ones that are
19 available have been provided. If there are any other
20 discovered, they should be produced immediately.

21 With respect to the pay statements for the employees in
22 question, it looks to me that the year-end summaries have
23 appropriate redactions and non-redactions.

24 Taking Ms. Ford at her word that she needs the bi-weekly
25 versions of these with the RSU information redacted as well, so

1 she can track the exact times, I'll order you to produce it
2 with those items unredacted on a bi-weekly basis, unless there
3 is a summary spreadsheet that can be provided that has all that
4 information, in which case you don't have to do it. Okay?

5 All right, with respect to dividends, it's my
6 understanding, based on looking at the year-end summary, that
7 the dividends information paid is -- is available in that
8 document. So I think that nothing further needs to be done on
9 that one, subject to my comment on the pay statements
10 generally.

11 On the Compensation Calibration Sheets and the
12 Compensation Planning Guidelines and e-mails relating to those,
13 Apple has represented that it has not completed its production
14 as to 2011 and 2012, at least as to the Compensation Planning
15 Guidelines and -- sorry -- Compensation Planning Guidelines and
16 e-mails about those. I think I have that right. Those will be
17 produced no later than -- how long do you need?

18 **MR. BOYER:** Seven days is fine, your Honor.

19 **THE COURT:** Let's just say, all of these things
20 should be produced by the end of the week. We'll talk about
21 schedule, but let's put a pin in that. But everything I'm
22 saying needs to be produced should be done by the end of the
23 week, subject to further discussion about timing. Okay.

24 With respect to the category of records and spreadsheets
25 showing compensation, stock bonus and dividends for each

1 employee, Apple -- Mr. Boyer is going to check whether Apple
2 can generate a spreadsheet or spreadsheets that shows in
3 summary form across all of the employees at issue here what
4 their compensation, stock bonus, dividends show, and so on, on
5 a comparative basis.

6 Apple is not required to create information that's not
7 maintained in the ordinary course of business, but if a
8 database can be queried to output information, whether that
9 takes multiple spreadsheets or a single spreadsheet, then I'm
10 going to require Apple to do that.

11 All right. Apple is also going to provide information
12 that shows, over time, during the relevant period, how many
13 employees and contractors reported to each of the eight
14 employees that worked for Mr. Kotni, as well as Mr. Kannan if
15 that information has not already been produced. It's not
16 required to produce any budget-related information on that
17 point.

18 And then finally, with respect to job levels and
19 promotions through job levels, this is one where you guys need
20 to talk further, probably, but Apple has represented it has
21 already produced that information, and Ms. Ford may ask on
22 behalf of Mr. Kannan -- explore that question in deposition.
23 If it turns out that's not the case, then Apple is going to
24 need to provide that information, and the information is what
25 job level classification each employee had and when that

1 classification changed, the date that classification changed.

2 Okay. That's that issue. Any questions? Timing?

3 **MS. FORD:** I was wondering, on the job levels, the
4 why of the job level changes is a very important issue for us,
5 and we suspect that there's communications and records that
6 would show why somebody was promoted when Mr. Kannan was not.

7 **THE COURT:** I'm not sure if that's encompassed in
8 the personnel records categories, but those are only for
9 certain employees. Those weren't for all eight. So I think
10 you have a little bit of a problem with the "why," because I'm
11 not sure that's encompassed by my prior order, and that's what
12 we're talking about. That's probably a deposition question, as
13 well.

14 You've had Mr. Kotni's deposition, right?

15 **MS. FORD:** Yes, and he --

16 **THE COURT:** Okay.

17 **MS. FORD:** -- didn't know, or couldn't remember a
18 whole lot of things, but yes. Also, a lot of the documents
19 that we're talking about were not produced until after his
20 deposition was taken.

21 **THE COURT:** All right, well, we're going to get to
22 that issue, so hold tight on that.

23 In terms of the timing for this production, I'd like --
24 given the -- you all have a deadline of completion of discovery
25 of the 30th, which is Monday, and you are going to need some

1 relief from Judge Davila on that point.

2 So let me ask Mr. Boyer, based on the things that I've
3 asked that need to be produced, can you get it done by Friday?

4 **MR. BOYER:** The 2011 and 2012 compensation e-mails,
5 yes, I could definitely do that. The Options and Awards
6 Summary and to the extent that we can come up with some sort of
7 summary for the eight employees, it may take a little bit more
8 time, because our database needs to be queried, there may be
9 multiple queries, it needs to be done properly and checked, and
10 I don't think we could do that by Friday.

11 **THE COURT:** Okay. How about, you said a week
12 initially, October 1st? That's a week from today.

13 **MR. BOYER:** I -- yeah, I think --

14 **THE COURT:** Why don't you -- I realize you have to
15 ask.

16 **MR. BOYER:** Yes.

17 **THE COURT:** So I'm going to expect you to produce
18 everything that you possibly can as quickly as you can to
19 Ms. Ford. If you find out that it's going to take longer,
20 you'll need to let her know. For those particular items, those
21 spreadsheets, or queries of the database, you're going to need
22 to let her know, and report to the Court as well, about what
23 the status is.

24 Ms. Ford, I know you want the information, and so if the
25 information is not accurate, it doesn't do you any good. So

1 I think it's in everyone's interest to be expeditious about it
2 but also to communicate about, practically, what's needed. I'm
3 sure you'll let Apple know that they need to devote attention
4 to this.

5 **MR. BOYER:** Yes, your Honor.

6 **THE COURT:** Okay. I'd like to leave this topic and
7 go to the next discovery dispute, and that's at document
8 number 108, Exhibit 2, and document number 115. This is Apple
9 designation of Rule 30(b)(6) designees.

10 All right. So let me just kind of share with you some
11 thoughts about this dispute, and I would like to hear from the
12 parties about what really happened, because I can't tell
13 exactly from the papers.

14 So Mr. Kannan is entitled to have Apple designate specific
15 people for specific topics. Could be more than one per topic,
16 as you all know, and Apple's obligation is to not only
17 designate those people but prepare them, and to provide dates
18 on which they're going to be available.

19 Usually this is something that people cooperate about,
20 right? You talk to each other, that kind of thing. If there
21 are objections to a particular category, it's ambiguous, too
22 broad, don't understand, you talk about it. The objections are
23 often a vehicle for talking about it and reaching some
24 resolution, or crystallizing a dispute.

25 My sense is that none of that happened. Apple searched

1 objections, indicated people that it expected to designate
2 subject to the objections. The objections never got discussed
3 between the parties, and nobody ever came to the Court until
4 months later. Meanwhile, 17 topics were added. So it puts the
5 Court in a difficult position to try to help you with this.

6 So let me just start with a question: Have the parties
7 discussed Apple's -- has Apple objected to all 27, or only the
8 first 10 topics?

9 **MS. FORD:** Only the first 10.

10 **MR. BOYER:** Well, that's not accurate. We have
11 objected to all of them because of the -- well, in some regard,
12 because of the scope of them, and Apple's not objecting to not
13 produce anybody, but yeah.

14 **THE COURT:** Yeah. Yeah, but I mean, did you provide
15 objections, written objections, to Ms. Ford on all 27 topics
16 before your written submission to the Court?

17 **MR. BOYER:** Yes, and in fact, we discussed them,
18 what, about a week before, I believe? I think that's right.

19 **THE COURT:** So right now, there are written
20 objections -- you should each know what your position is on the
21 scope and all those kinds of things.

22 Is that not the case, Ms. Ford?

23 **MS. FORD:** I don't believe there was ever a written
24 objection other than the one that we got which only covered the
25 10 topics. I don't believe we've ever received anything on the

1 other topics in the form of a written objection.

2 Now, I might have gotten an e-mail from him --

3 **THE COURT:** That counts.

4 **MS. FORD:** -- mentioning something, but no formal
5 written objections other than the first 10.

6 **THE COURT:** Okay. Maybe it's my fault for using the
7 word "formal." You're quite correct that you don't get to get
8 out of a deposition notice by simply serving objections. It
9 doesn't work like that, like it does for document requests or
10 interrogatories.

11 However, it's appropriate to communicate with each other
12 by e-mail about concerns you have about the other side's
13 discovery requests, when we're talking about the deposition
14 topics. Many people serve them in, you know, formal notices or
15 formal objections. E-mail is fine.

16 So I'm just trying to understand whether Apple has shared
17 with you and you have heard the objections that they have to
18 your 27 topics.

19 **MS. FORD:** Um, in any kind of --

20 **THE COURT:** In any way.

21 **MS. FORD:** Not really, okay? Like I was saying,
22 I would think that there may well be an objection, or an e-mail
23 from Mr. Boyer that might say something to the effect of, we
24 think your topics are too broad and vague. I don't believe
25 I've received anything that goes topic by topic and talks about

1 the specifics of what is a problem with any one of them.

2 We did have a conversation following a deposition which
3 took place on September 10th, I believe it was, or it might
4 have been the one that was on the 8th -- no I think it was the
5 one on the 10th.

6 **THE COURT:** About the 27 topics?

7 **MS. FORD:** About the topics, and Mr. Boyer's
8 response, and we sort of went through the list of topics, and
9 in response to most of them, he went, "Uh, yeah, well, that --
10 you know, that could be..." and then he'd drop a name, and,
11 "You know, well, that could be so-and-so."

12 **THE COURT:** All right.

13 **MS. FORD:** What I've been looking for is a
14 definitive name so we then can proceed to the scheduling part,
15 and I'm perfectly happy to talk about scope, but I was pretty
16 careful on the scope to limit it to 2011 and forward, to limit
17 it to things that relate to or impact the employees that
18 reported to Mr. Kotni.

19 So I'm not asking about, you know, preparation on all of
20 these overall company issues like how the compensation process
21 works for every employee in the company, the ones that work at
22 the stores and so on.

23 **THE COURT:** Okay, we can --

24 **MS. FORD:** I tried to be quite specific, and I never
25 got anything specific from him other than just the generalized,

1 "Oh, this is over-broad," you know, the "We don't know how to
2 do this."

3 **THE COURT:** Okay, so let me ask you. Mr. Kotni,
4 Mr. Carr and Ms. Ramirez were identified at least with respect
5 to the first 10 topics --

6 **MS. FORD:** No.

7 **THE COURT:** -- in the e-mail as people who may have
8 information responsive, and then in that e-mail, Mr. Boyer or
9 Ms. Pham, I can't remember which, asked --

10 **MS. FORD:** Can I...?

11 **THE COURT:** -- which -- I have it, I have a copy of
12 it -- asked which -- asked me to propose dates. Okay, fine.

13 Did you actually question Mr. Kotni about any of the
14 topics for which that e-mail said he may have information?

15 **MS. FORD:** Okay, first of all, Ms. Ramirez's name is
16 not in that e-mail.

17 **THE COURT:** Okay, Mr. Carr.

18 **MS. FORD:** Okay, Mr. Carr and Mr. Kotni's names are
19 in that e-mail but, you know, did I -- first of all, did I ask
20 Mr. Kotni questions about decisions not to award or pay stock?
21 Sure, I asked him questions on that.

22 **THE COURT:** I don't -- I mean, as a designee.

23 **MS. FORD:** No.

24 **THE COURT:** So the way -- the way this works, right,
25 is you go to a deposition, someone's testifying as a personal

1 witness, and also testifying as a designee of the corporation.
2 Usually that's recited on the record.

3 So when Apple had Mr. Kotni come for a deposition, did
4 Apple say, Mr. Kotni is here to testify on behalf of the
5 company about X, Y and Z topics, and otherwise, he's appearing
6 and testifying personally?

7 **MR. BOYER:** I did not do that, your Honor, and the
8 reason for that was because he was noticed individually. We
9 had not finished the meet-and-confer process, and we've also
10 offered to bring him back. That's not really --

11 **THE COURT:** Okay. Good.

12 **MR. BOYER:** -- an issue, so....

13 **THE COURT:** All right. I don't want to belabor it.
14 If you all -- if you said, you know what, Mr. Kotni's coming
15 back as a 30(b)(6) designee for certain topics, but from your
16 submission, it sounds like you're relying on, Mr. Kotni
17 testified about X, Mr. Carr testified about Y. That doesn't
18 cut it, right? Somebody has to be a designee, has to be
19 prepared to testify, and actually has to answer on behalf of
20 the company.

21 If you're telling me that hasn't happened yet, then we
22 have to totally deal with the 30(b)(6) notice kind of *sui*
23 *generis*, right? If none of that has happened, no testimony on
24 any 30(b)(6) topics, then we're just going to pretend that --
25 I'm just going to ignore all those statements, because you have

1 to actually do it.

2 So tell me if I'm misunderstanding Apple's position.

3 **MR. BOYER:** Well, I think it's -- and I don't want
4 to waste the Court's time, but because we never came to an
5 agreement as to who was going to testify to what, because
6 plaintiff's counsel wanted us to -- because we had two
7 witnesses, given the great amount of time that's involved here,
8 seven years, a little bit over that, we had two witnesses that
9 would be able to testify to various topics.

10 Plaintiff's counsel did not accept it, saying we needed to
11 tell her exactly what each one of these witnesses is going to
12 testify to, and that's not what within, one, the requirements
13 of 30(b) (6), and so we never came to any agreement as to
14 whether there would be somebody designated as a 30(b) (6) on
15 various topics, but again, however, we have agreed to bring
16 Mr. Kotni back. He's probably going to be able to testify
17 about 80 percent of what's sought in terms of the compensation
18 and promotion process.

19 Mr. Rastogi is also being deposed on October 1st --

20 **THE COURT:** And what is his, or -- what is his
21 position?

22 **MR. BOYER:** He is Mr. Kotni's manager, direct
23 supervisor.

24 **THE COURT:** All right.

25 **MR. BOYER:** So in terms of all the decision makers

1 during this time period, plaintiff has access to them, and
2 that's Mr. Kotni and Mr. Rastogi. They've also had access to
3 the HR individual who testified about the compensation process
4 in general during that time period, and so what I'm trying to
5 do is avoid bringing people back two or three times.

6 Now, I understand that we have an obligation to designate
7 someone, but we cannot, you know, specify the lists of
8 questions or topics that each individual is going to testify
9 to.

10 **THE COURT:** Right, we'll get to that point.

11 **MR. BOYER:** Okay.

12 **THE COURT:** I think the parties may be disputing
13 something that I can give you guidance on, so it won't be a
14 dispute anymore, but it sounds like, to state it bluntly, there
15 has been no 30(b) (6) testimony on behalf of Apple at this
16 point.

17 **MR. BOYER:** That's accurate, your Honor.

18 **THE COURT:** Okay. Now, is there testimony that has
19 already been given that Apple would stipulate is binding on the
20 company and is 30(b) (6) testimony, if Ms. Ford were to choose
21 that option? And I'm thinking of it only as a time-saving
22 measure.

23 So I'm sure Ms. Ford doesn't want to ask the same five
24 questions again of X witness if she's already done it and has
25 already gotten satisfactory answers, but that would mean, if

1 that were to work, that Apple would have to stipulate that
2 those questions and answers were binding on the company.

3 Is that something you'd be willing to do, or does it
4 depend on the question and answer?

5 **MR. BOYER:** I think certainly it would depend on the
6 question and answer, but yeah --

7 **THE COURT:** Okay.

8 **MR. BOYER:** -- I mean, ultimately, if we come to
9 agreement, that would be fine.

10 **THE COURT:** Okay, all right. So let me -- let me go
11 through the topics. I'm going to tell you what my concern is
12 kind of overall about -- and this doesn't apply to every single
13 topic, some of which seem totally fine and unobjectionable, and
14 I don't understand there is any objection, but there are a
15 couple repeated things that I think might -- we might need to
16 discuss.

17 So one is this time period. In my July 11th order, we
18 talked about the relevant time period for the eight employees
19 being January 1st of 2011 through December 31st of 2018, solely
20 because for the kind of comparison-type information that was
21 being sought, that broader time period, beyond what
22 Mr. Kannan's employment was, mattered, was relevant. Okay.

23 For some of these topics, that same rule seems to apply,
24 but for others it doesn't, because the other topics are just
25 about Mr. Kannan and his employment, his work, his activity.

1 So it seems that you all have a dispute about the date
2 that is not really discussed in your papers, but that I see
3 when I line up representations about what Mr. Rastogi will
4 testify about and what the depo topic asks for, that seems like
5 they have already been resolved, or could be resolved or really
6 shouldn't be disputed.

7 So let me understand what the problem is regarding the
8 dates, and I'm just looking at the first topic, which talks
9 about any decision or decisions not to award compensation,
10 salary increases, stock awards, RSUs, bonuses or other
11 potential compensation to Kannan in the years 2011 through
12 2017, et cetera.

13 He didn't work for Mr. Kotni except November 4, 2013
14 through April 17th, 2017. So I would assume there's no need to
15 go back to 2011.

16 **MS. FORD:** Um, well, there's two reasons to go back
17 to 2011. First reason is that the distinction or comparison
18 between how he was treated by prior supervisors and then how he
19 was treated by Mr. Kotni I think is relevant to whether what
20 was happening was appropriate.

21 The second reason is that there was a cancellation of his
22 bonus and RSUs that had already been awarded to him, or he
23 hadn't been told about it, but they'd already been -- the
24 decision had been made to award them to him, right at the time
25 that he transferred into Mr. Kotni's team, and that is also

1 relevant because that is RSUs and bonuses that he would have
2 gotten, should have gotten, and the reasons why that didn't
3 happen are highly relevant to this action.

4 **THE COURT:** Okay.

5 **MS. FORD:** So those are two reasons why I think
6 going back before the absolute date, which was sometime in the
7 Fall of 2013 when he started to report to Kotni, would be
8 relevant.

9 **THE COURT:** Fall 2013.

10 **MS. FORD:** 2013, sorry, I beg your pardon.

11 **THE COURT:** Okay. Mr. Boyer, what's your view?

12 **MR. BOYER:** Right. So the time before the time he
13 reported to Mr. Kotni is irrelevant because he alleges that no
14 other manager discriminated against him other than Mr. Kotni.
15 So by the time he reported to Mr. Kotni, that's the only thing
16 that really matters.

17 With regard to the bonus being canceled, I have not seen
18 any evidence, in document form, other than plaintiff's
19 testimony, that that ever occurred.

20 **THE COURT:** That the bonus was canceled?

21 **MR. BOYER:** Right, bonus and RSU were canceled.

22 **MS. FORD:** They've produced e-mails showing that
23 they were canceled that we've gone over with both Kotni and
24 Ramirez in their depositions.

25 **THE COURT:** Okay. So here's what I'm going to do on

1 this one. You can ask, and you should designate someone who
2 can talk about these e-mails, but if you don't know what these
3 e-mails are and you've never seen the information, tell him
4 which e-mails you want to have his witness prepared about,
5 okay?

6 So Ms. Ford, you tell Mr. Boyer, I want a witness who's
7 prepared to talk about this event, this cancellation of RSUs or
8 bonuses, or whatever it is you're concerned about, right at the
9 transition, but really, your deposition testimony needs to
10 focus on the discriminatory conduct that you're attributing to
11 Mr. Kotni, and not beyond. Okay?

12 **MS. FORD:** We did not limit our Complaint in this
13 action to Mr. Kotni only.

14 **THE COURT:** But I understand there's been testimony
15 in the case from your own client that says that that's what's
16 happened.

17 **MS. FORD:** No, actually, he said that he re-thought
18 and began to wonder about the reason why his bonuses were
19 canceled and his RSU was canceled in 2013, which happened,
20 coincidentally, to be almost right after his son was diagnosed
21 and right after he took his son to India to see his -- his
22 grandfather, Mr. Kannan's father, who happens to be a
23 physician.

24 **THE COURT:** Okay, the allegations in your Complaint
25 about are -- are about Mr. Kotni's interactions with

1 Mr. Kannan. So I'm going to at this point limit you to that
2 kind of inquiry.

3 I've already said you can ask about what happened at the
4 cusp, this cancellation that happened on the cusp of his
5 transfer to Mr. Kotni's supervision, but the purpose of the
6 broader range of discovery, 2011 to 2018, was to capture
7 basically comparator evidence, okay?

8 **MS. FORD:** Yes.

9 **THE COURT:** So not prior employment by Mr. Kannan
10 with other -- you know, supervised by other people at the
11 company. That was -- and that's how I've understood the
12 dispute going from our prior interaction, and that's what
13 I understand your claims to be in this case.

14 So, you know, if you discover something that you think
15 expands the scope of your discrimination allegation beyond
16 Mr. Kotni's activity or interaction with your client, you can
17 certainly bring it to the Court's attention, but I'm going to
18 limit the obligation that Apple has to prepare a witness to
19 testify.

20 Certainly if you're taking someone's personal deposition,
21 you can ask him whatever you want related to the case, but for
22 a 30(b) (6) deposition, this is what they're required to prepare
23 a witness about.

24 So what I'm not clear about -- and I don't need to
25 micromanage it, you all can work it out -- is who's going to do

1 it, Mr. Kotni or Mr. Rastogi. And let me just give you some
2 guidance on how this happens.

3 It is totally appropriate for a corporate entity to say,
4 "The category is this big, I have two people who together can
5 cover it." Unless you're prepared to give Mr. Boyer a list of
6 all of the questions that you ask -- that you're going to ask,
7 so he can tell on a question-by-question basis which witness is
8 going to take which question, you can't expect him to parse it
9 so fine to tell you exactly what the witness is going to say.

10 Sometimes it's possible to say, this witness can cover
11 this time period, from point A to point B, and this witness can
12 cover the remainder, but sometimes, especially when you have
13 people in a hierarchy in an organization, one witness can
14 handle, you know, detail-level questions and other witnesses
15 can handle the sort of higher-management-level questions.

16 So I'm not going to require Apple to slice it that fine
17 unless your topics are so particularized, which they aren't.
18 So you all can talk about it, because nobody wants to waste
19 time.

20 **MS. FORD:** Right.

21 **THE COURT:** And if Mr. Boyer can tell you this
22 witness doesn't know anything about this, but he knows about
23 this, great, I encourage you to do that. But other -- so
24 I just wanted to say, it's appropriate to designate two
25 witnesses for a topic.

1 **MS. FORD:** Okay, but can I just, please, add a
2 little bit to that?

3 **THE COURT:** What's your concern?

4 **MS. FORD:** Because I'm perfectly familiar with the
5 fact that it commonly comes up that, you know, within a given
6 topic, there will be two people. I am not familiar with a
7 corporation that refuses to tell you, like you just said, this
8 guy knows about that and that guys knows about that.

9 The problem that I end up with, as the person who's taking
10 the deposition, is that testimony is supposed to bind the
11 company.

12 **THE COURT:** Um-hum.

13 **MS. FORD:** I have to take one person's deposition
14 first and the next person's deposition next. I can't tell how
15 to divide up my questions, first of all; and second of all, if
16 I get an answer, the company's supposed to be bound by that,
17 except they can totally change it, that testimony, to that same
18 question, when they call in their second witness that's also
19 speaking for the company.

20 The company should have to produce enough information so
21 that I can tell what questions to ask which person and where
22 Apple is stuck.

23 **THE COURT:** I'm not unsympathetic to your view, but
24 it's sort of like a chicken-and-egg problem that we have. So
25 you're going to talk about this when we're done here. You're

1 going to go in my jury room and you're going to talk about this
2 issue, okay?

3 And I hope that you don't need my help to sort it out, but
4 you're going to share with each other what kinds of things you
5 want to explore and what the witness' scope of knowledge is,
6 whether it's by date or by kind of information.

7 Okay, number 2. Any response or action taken with respect
8 to any request by Kannan for awards of RSUs or bonuses other
9 than compensation.

10 All I have from Apple is, Carr testified on this topic.
11 Are you going to re-produce Mr. Carr to testify as a 30(b) (6)
12 witness on this topic?

13 **MR. BOYER:** If that's what the Court orders, yes,
14 your Honor, we would.

15 **THE COURT:** Well, you've got to produce somebody.
16 I am not going to tell you who to pick, I don't know any of
17 your witnesses, but somebody has to testify on that topic.

18 **MR. BOYER:** Yes, your Honor, we'd bring him back for
19 that.

20 **THE COURT:** And I otherwise don't see that there's
21 any objection that you have to the scope of the topic. Maybe
22 it's not clear exactly what the scope is, but there's nothing
23 in your papers for me to rule on.

24 **MR. BOYER:** Right. So we didn't find the topic
25 objectionable.

1 **THE COURT:** Great.

2 **MR. BOYER:** We said Mr. Carr would be produced as a
3 30(b) (6), and counsel said that she did not want to take him as
4 a 30(b) (6), and so if the Court orders it, we will produce him
5 again. We just don't want to, you know, obviously have --

6 **THE COURT:** Okay.

7 **MR. BOYER:** -- the same sort of discussion --

8 **THE COURT:** Right.

9 **MR. BOYER:** Yeah.

10 **THE COURT:** So you'll need to produce a witness for
11 this topic, a corporate designee.

12 Same thing for number 3, Mr. Kotni and Mr. Carr, again,
13 you need to designate a witness or witnesses for this topic as
14 a 30(b) (6). Basically, I don't see that there's any objection
15 on this point.

16 Number 4, also appears to be no objection, and you'll need
17 to designate a witness to testify on behalf of the company on
18 that topic.

19 Number 5, okay, I didn't understand this one. Maybe you
20 all do. "All peer information and communications concerning
21 Kannan and others." That's really broad, and I'm not really
22 sure what "peer information" is, and so unless you all have
23 talked about that and you all know what the scope of that one
24 is, I think we should address that one.

25 **MS. FORD:** The peer review is actually a formalized

1 process that goes on as part of the compensation review process
2 every year, and the peer review comments are all in writing.
3 I think they're all in writing.

4 **THE COURT:** So you're going to be talking about
5 documents that have already been produced to you --

6 **MS. FORD:** Yes, in part, and --

7 **THE COURT:** -- and asking a witness knowledgeable
8 about those documents?

9 **MS. FORD:** Yeah, and then whether there's anything
10 that isn't in the -- you know, contained in those documents,
11 but yes, we've been provided with that, and this peer review
12 process is something that is -- it's part of the formalized
13 system. I guess I could have put a capital P, capital R on
14 "peer review," but --

15 **THE COURT:** No, I just want to make sure, so -- and
16 so you understand what Ms. Ford is asking for on this topic, no
17 ambiguity about it, and you're prepared to designate Mr. Kotni
18 to testify on behalf of Apple?

19 **MR. BOYER:** I am. I get a little nervous by the
20 word "communications," just given how broadly counsel tends to
21 interpret their communications, and I'm not sure what exactly
22 that means, but yes, Mr. Kotni will testify to this topic in
23 terms of the peer review information that he received and --
24 I mean, that's really -- it seems like all that it's asking
25 for.

1 **THE COURT:** Okay. So here's another bit of guidance
2 on expectations about questioning a witness and preparing a
3 witness for topics like this. A witness cannot possibly know
4 everything about every communication, especially ones that he
5 or she didn't participate in.

6 So if it's the kind of situation where you say, this
7 witness needs to investigate and be prepared to answer on
8 behalf of the company about a particular communication, you
9 need to identify those, in advance, sufficiently in advance of
10 the deposition so that Mr. Boyer can prepare the witness to
11 testify about that.

12 Because otherwise, if you get "I don't know," "I don't
13 know what so-and-so meant when they wrote that," you can't come
14 back and say, you didn't prepare your witness.

15 I mean, some communications are formal communications that
16 are part of a process. He's going to be the one who made it,
17 it's within the scope, it's going to be, like, the critical
18 communication, okay. But random e-mails, unless you've
19 identified them in advance, there's no way somebody can
20 possibly figure out they need to prepare a witness about that.

21 **MS. FORD:** The problem that I have is that I need to
22 ask a more general question. For example, Mr. Rastogi, did
23 anybody communicate with you and tell you things about
24 Mr. Kannan that influenced your decision --

25 **THE COURT:** That's fine.

1 **MS. FORD:** -- whether or not to -- well, that's a
2 generalized question, and it's not identified --

3 **THE COURT:** They're not -- I'm not talking about a
4 generalized question.

5 **MS. FORD:** -- to a particular --

6 **THE COURT:** I'm talking about particular e-mails.
7 That's the problem I'm trying to identify.

8 **MS. FORD:** Okay.

9 **THE COURT:** If there is -- there are probably a
10 bunch of e-mails produced in this case, and it's not -- it's
11 not reasonable to expect a single witness, particularly a
12 witness who didn't author an e-mail, and it's not within the
13 scope of that witness' job, but is nevertheless being
14 designated to talk about a particular category that's been
15 described very broadly, to be able to answer a question about
16 the meaning of a particular e-mail. Sometimes it's not
17 appropriate ever to ask that question.

18 But what I'm saying is if there is some e-mail that you
19 consider critical to this issue, you should identify it in
20 advance, so that Apple has an opportunity to prepare the
21 witness about it, okay?

22 **MS. FORD:** In the context of this litigation, I will
23 tell you there have been almost no questions about, what is the
24 meaning of this --

25 **THE COURT:** Okay.

1 **MS. FORD:** -- e-mail. It's --

2 **THE COURT:** It may not be an issue.

3 **MS. FORD:** -- whatever happened, happened.

4 **THE COURT:** But I just saw this percolating, and
5 I just wanted to --

6 **MS. FORD:** Okay, thank you.

7 **THE COURT:** -- survey this.

8 Okay, number 6, any communications between members of
9 management concerning Kannan. Okay, I understand the issue
10 here is, what are members of management. We still have a
11 dispute about that?

12 Who -- I'm not really sure what you're getting at here,
13 Ms. Ford. I think you -- there's the sort of the broader
14 question that was asked before about Mr. Kannan's awards and
15 compensation, and now you want specifically communications
16 between members of management. Who are you envisioning
17 comprise members of management?

18 **MS. FORD:** Well, that's the problem, is that -- you
19 know, in part, that's the problem is that I don't know. I know
20 that Mr. Kannan and Mr. Rastogi communicated to a certain
21 extent concerning his compensation.

22 I know that Ms. Ramirez, for some of the years -- although
23 not all of them, she left Apple years ago -- but that for some
24 of the years, she was an HR person who seemed to sort of
25 collect information and data. She didn't really have any input

1 into it.

2 I don't know whether there's anybody else involved. Even
3 as I sit here, I don't know whether there was anybody else
4 involved.

5 **THE COURT:** But by "members of management," you mean
6 people who are Mr. Kotni or his supervisors, his direct
7 reporting supervisors?

8 **MS. FORD:** I would hate to make it that narrow in
9 case there's, in fact, input into the decision-making processes
10 concerning things like cancellation of his bonuses that maybe
11 came from his former manager, or maybe came from some other
12 manager that he worked with.

13 **THE COURT:** Okay, let me ask it --

14 **MS. FORD:** And that's why it's --

15 **THE COURT:** Yeah, okay, let me ask the question this
16 way.

17 **MS. FORD:** It is the way it is.

18 **THE COURT:** Do you have documents that suggest that
19 there are people in management involved in these kinds of
20 decisions, that is, compensation, his stock awards, et cetera,
21 beyond Mr. Kotni and Mr. Rastogi and this HR person, who maybe
22 you wouldn't even consider management, I'm not sure, but do you
23 have documents that reflect other people were involved?

24 **MS. FORD:** Um, no, but then --

25 **THE COURT:** Okay.

1 **MS. FORD:** -- Apple's been very careful about they
2 disclose to us.

3 **THE COURT:** All right. So Mr. Boyer, what's your
4 concern about this topic?

5 **MS. FORD:** Oh, take that back. With respect to the
6 cancellation of the RSUs and the bonus that happened
7 contemporaneous with his transfer, from that we have e-mails
8 from his former manager, Mr. Raja, who we also hope to depose
9 but we don't have a date for him yet, and he just said, "Cancel
10 his bonuses and his RSUs," and it doesn't say why.

11 And when I asked Ms. Ramirez, who is the only party to
12 that communication I've been able to depose yet, she said,
13 "I don't know."

14 **THE COURT:** Okay, I don't have Mr. Raja -- this is
15 this reference to other depositions that you need --

16 **MS. FORD:** Um-hum.

17 **THE COURT:** -- in your papers. I forget which
18 filing it is.

19 **MS. FORD:** Yes.

20 **THE COURT:** Maybe it's the administrative motion.
21 Mr. Roger (sic) is not on the list. The list I had was --
22 I don't know if these people are male or female -- Kundar,
23 Raja, Rastogi, and then a further deposition of Mr. Kotni.

24 So is Mr. Roger somebody in --

25 **MS. FORD:** Raja, R-A-J-A.

1 **THE COURT:** Oh, oh, excuse me, I'm sorry.

2 **MS. FORD:** Mr. Moazam Raja.

3 **THE COURT:** Raja, okay. I thought you said Roger.
4 Sorry, okay, I got it. Got that one on the list. Okay, so
5 that one's a to-be-deposed person anyway.

6 **MS. FORD:** But when you asked me what do I mean by
7 communications, that's what I'm talking about.

8 **THE COURT:** Okay.

9 **MS. FORD:** And I don't know enough and I don't have
10 the e-mails and, you know, if there are some, there may be, but
11 I don't -- I don't have them.

12 **THE COURT:** Let me let Mr. Boyer respond here. You
13 were concerned about the scope of this topic and trying to
14 understand what she meant. You've now heard what she meant.
15 Are you able to prepare a witness or do you have objections on
16 this topic?

17 **MR. BOYER:** So really, I'm looking at, like, three
18 different people on one topic. See, the issue with -- and the
19 objections that we've served is because these are so vague and
20 they are so over-broad in terms of what they could encompass
21 and could involve so many people, and there's some guesswork
22 involved too, because there's no information that comes from
23 the other side saying, I want somebody to specifically talk
24 about X, Y and Z, which makes it very challenging, because if
25 we get into a deposition and, you know, did you look through

1 everyone's e-mail in 2012 to find, you know, a communication
2 with, that's the problem.

3 **THE COURT:** I understand the problem, but just to
4 try to simplify, here's the issue: I think what Ms. Ford is
5 after is who made the decisions about what compensation, stock
6 awards, et cetera, Mr. Kannan was going to get. So who were
7 the people who were involved, who took direction from him, that
8 kind of stuff.

9 So we know Mr. Kotni was involved. She believes
10 Mr. Rastogi was involved. If they consulted with other people
11 in making their decision about what his compensation and awards
12 should be, those are the people that -- you need to talk to
13 them first, figure out who they talked to, and figure out what
14 those communications were. I think that's what the scope of
15 the prep is.

16 **MR. BOYER:** And I agree, your Honor.

17 **THE COURT:** And then there's this prior manager
18 Raja. I mean, it seems like the simplest way to handle that
19 is, he's been identified as a witness for a personal
20 deposition. You know, maybe in the -- maybe as part of his
21 personal deposition you can just have a little 30(b) (6) snippet
22 that takes care of this one issue. That's my suggestion.

23 **MR. BOYER:** All right, your Honor.

24 **THE COURT:** I think you guys are going to talk about
25 this afterwards.

1 **MR. BOYER:** Thank you.

2 **THE COURT:** That's my thought.

3 Okay, any replacement for Kannan after he left, it sounds
4 like there's no objection on this. Mr. Kotni will be
5 re-designated -- designated to testify about this topic, is
6 that right?

7 **MR. BOYER:** That's correct, your Honor.

8 **THE COURT:** All right. Number 8. So we have three
9 in a row that are about this system at Apple, job level system,
10 bonus system and compensation system, and I have the same
11 questions about all of these.

12 First of all, the date limitation. These all go back to
13 2010. I don't see any reason why they should go back to 2010.
14 It seems like January 1st, 2011 is the earliest date that is at
15 all relevant for any purpose here.

16 **MS. FORD:** I can live with that, no problem.

17 **THE COURT:** Okay, Mr. Boyer, do you agree?

18 **MR. BOYER:** I'm sorry, the date again, your Honor?

19 **THE COURT:** January 1st, 2011, the same date we used
20 for the documents in my July 11th order. That would encompass
21 people who worked for Mr. Kotni before -- slightly before
22 Mr. Kannan joined and continued after.

23 So instead of going way back to 2010 about eight --
24 this is topics 8, 9 and 10. Each of them go back to 2010. I'm
25 saying that's too broad. The relevant time period should be

1 January 1st, 2011 to December 31st, 2018.

2 Do you agree?

3 **MR. BOYER:** I would argue it's still a bit broad.
4 The issue with the job level, bonus and compensation, again,
5 does not arise until 2013. I would request that it be limited
6 to 2013 to '18.

7 **THE COURT:** But see, this is the same problem we had
8 when we talked about the comparator employees. I mean, this is
9 a question that relates to the system generally as it applied.

10 And so I think -- I can see merit in understanding how the
11 system worked. So this is a description of the system. It's
12 not particular decisions. It's a description of the system.

13 **MR. BOYER:** Right. No, I do understand, your Honor,
14 and the only other caution that I have is it may be very
15 difficult to find people who would know something so long ago.
16 It's almost 10 years.

17 **THE COURT:** That's a problem that happens. So you
18 have an obligation to investigate and inquire. If the
19 information is not available, it's not available. So your
20 designee will do the best job he or she can on that topic.

21 The other question I have that relates to all three of
22 these is the department in which Kannan was employed in
23 California. I'm not really sure what that means. I have been
24 assuming that the relevant realm of people we're talking about
25 are the eight employees -- Mr. Kannan and eight employees who

1 worked in the APS Department for Mr. Kotni.

2 Do we mean something different here or do we all agree
3 that's what this means?

4 **MS. FORD:** That's what that --

5 **THE COURT:** Okay, great.

6 **MS. FORD:** Reference to the department is the APS
7 Department.

8 **THE COURT:** Okay. So then it sounds like, for each
9 of these, it will either be -- okay, number 8 -- you'll have to
10 decide who to designate. I'm not going to micromanage who to
11 designate, but there will need to be a designee or designees
12 for 8, 9 and 10, with the date limitation I described and the
13 department limitation I described, the APS Department and the
14 eight employees.

15 On number 9, there's a limitation that talks about
16 Contributor Level 4 and Contributor Level 5, which I didn't
17 understand. But that's totally acceptable and fine, but
18 I didn't understand why Apple was making that specific
19 limitation on what Mr. Rastogi would testify about.

20 **MR. BOYER:** Oh, with regard to the bonus system,
21 your Honor? Yes.

22 **THE COURT:** Yes.

23 **MR. BOYER:** So the bonuses -- the amount of bonus
24 the individual can get depends on the level that they're at.
25 So each year, these compensation guidelines, you know, to the

1 extent that they're published, have certain -- each position
2 has a level of bonus that could be awarded. And so the -- you
3 know, for a 3 or a 2, IC 2 or 3, not really relevant to this
4 particular issue.

5 **THE COURT:** I see.

6 **MR. BOYER:** Really what we'd be looking at is the
7 IC 4 and 5 level, and that's why we wanted to limit it to this
8 particular --

9 **THE COURT:** Okay, that seems reasonable, because
10 I don't think that the lower-level contributors are really --
11 you don't really care about them. They're not going to be
12 similarly situated, is that right?

13 **MS. FORD:** No, we'd be more concerned with the --
14 well, I'll have to put a footnote on that one. Unless Apple is
15 going to point to the lower-level people as being, see, there's
16 lots of other folks who didn't get bonuses, when the answer is,
17 well, you didn't get bonuses because you're not, you know,
18 doing the same kind of job or whatever.

19 **THE COURT:** Okay.

20 **MS. FORD:** So if Apple is not going to point to
21 them, then I don't see any reason that I would need to know
22 about their bonus and comp system, but I think Apple is saying
23 something different. They are saying the people up above
24 the -- there's this individual contributor level and then
25 there's the manager levels, okay, and they've always wanted to

1 shave off those manager levels and take them out of the case,
2 make them irrelevant somehow.

3 That's not true, because my client is saying, I should
4 have gone to Individual Contributor 5, I should have gone up
5 into the management levels. These other people I'm pointing at
6 in my same department got hired at my level, at Individual
7 Contributor 4 --

8 **THE COURT:** And got promoted to manager?

9 **MS. FORD:** -- and they wound up as a Manager 5.

10 **THE COURT:** Okay.

11 **MS. FORD:** Well, then, if they did, how that bonus
12 system works is directly relevant.

13 **THE COURT:** So I think it is fair to exclude the
14 lower-level contributor positions, but how do you respond to
15 Ms. Ford's remark that part of the case is that he should have
16 been promoted to these other positions?

17 **MR. BOYER:** It's my understanding that, reading the
18 Complaint, the allegation is that he should have been promoted
19 from IC 4 to 5, not necessarily the manager level. So that is
20 different -- however, there are different levels of managers,
21 as well as Manager Level 1, 2 and 3. If the Court were to say,
22 well, okay, we were going to go ahead and require Apple to
23 designate someone on the manager level as well, it should be
24 limited to just Manager 1.

25 So each of these promotions are based on, obviously, level

1 of responsibility and performance and things like that. People
2 don't go from, like, an IC 5 to Management 3. They usually
3 step up through the process.

4 **THE COURT:** So of the eight -- the group of eight
5 folks that we're talking about who are -- I'm going to, for
6 lack of a better word -- a comparison to Mr. Kannan, by the end
7 of 2018, what level, job level, did each of -- what is the
8 maximum job level any one of them achieved?

9 **MR. BOYER:** I know for a fact that at least one of
10 them was a manager, so Manager Level 1.

11 **THE COURT:** Okay.

12 **MR. BOYER:** But I believe he started as an IC 5.
13 I have to get my chart out, but --

14 **THE COURT:** Yeah, I mean, what I think you should
15 use as your governing principle here is if, in this group of 8,
16 somebody achieved level X, you should talk about a -- have
17 somebody who's designated to talk about the bonus system that
18 encompasses that level. I think that that's probably within
19 the realm of reasonable scope here.

20 **MR. BOYER:** Yes, your Honor.

21 **THE COURT:** Okay. We're on to number 11,
22 Mr. Kannan's internal complaints and Apple's investigation of
23 Mr. Kannan's internal complaints.

24 Sounds like there's not really an objection on this one
25 and you'll make a designation, is that right?

1 **MR. BOYER:** Yes, your Honor.

2 **THE COURT:** Okay, same thing for number 12. The
3 only question I had here was about the dates. This is
4 Compensation Planning Guidelines for salary, stock and bonuses
5 applicable to Apple's IS&T Department, and the dates are 2011
6 forward.

7 I think the relevant dates ought to be January 1st, 2011
8 through December 31st, 2018, just like we did with the
9 documents before, and that the relevant department is this APS
10 department, with the eight employees.

11 So I'm not sure if there's any difference between what I'm
12 saying and what you're asking about, but it's -- I was
13 surprised to see the broader scope.

14 **MS. FORD:** Well, first of all, the IST department is
15 the larger group within which APS is included, okay? And the
16 testimony so far has been that the compensation planning was
17 done for the whole IST group, and the guidelines and everything
18 apply to that whole IST group, not just the APS groups.

19 In other words, there's not going to be planning
20 guidelines probably for Apple's APS department, or if there
21 are, they're so narrow that they're not really responsive or
22 not good enough. You really need the planning guidelines that
23 were developed for the IST department, of which APS is a part.

24 Then the second thing on the issue of going forward past
25 April of 2017 when he went to India, his damage claim includes

1 the fact that he went to India and earned a lot less in India
2 than he would have earned had he remained in his job in
3 California, but that he was essentially driven out and forced
4 to do that because of the cap on his earning ability.

5 And so the -- what they were doing with the comp system
6 with the people who remained behind, in other words, had he
7 stayed there, what would have happened to him up until the
8 present is pertinent.

9 **THE COURT:** So my thought on this is that the
10 compensation planning guidelines deposition inquiry should
11 mirror the discussion we had about the request for production
12 of documents. It should mirror that in scope.

13 So whatever was the relevant scope there, which I think
14 I included the relevant time period being January 1st, 2011
15 through December 31st, 2018, that's the relevant scope for this
16 as well. I'm not going to revisit that issue.

17 I get your point that compensation planning may be done at
18 a higher level than simply the group in which the eight
19 employees worked. That's fine, and I would expect that the
20 documents reflect that as well. So whatever these guideline
21 documents are that you're producing, I understand they're being
22 produced for these eight employees, but they reflect the
23 guidelines that may apply beyond those eight employees, that's
24 fine.

25 You can inquire about the guidelines generally, but

1 I really don't want to get into questions about applying to
2 other employees outside Mr. Kotni's group, and all of that
3 questioning would really be beyond the scope of what's
4 relevant.

5 **MS. FORD:** But really, in terms of cutting off all
6 of our discovery on the day that he moved to India --

7 **THE COURT:** It's not the day he moved to India.
8 December 31st, 2018 is at the end of the following year.

9 **MS. FORD:** Well, at any --

10 **THE COURT:** This is -- I'm not going to revisit that
11 issue. Okay? I'm really not. So we debated this question, we
12 talked about the documents. I don't see any reason to change
13 that.

14 Do you all agree otherwise? Like, if you're going to rely
15 on stuff that happened in 2019, then you better allow someone
16 to talk about it, but otherwise, I don't see that it bears on
17 the dispute. At least as to these topics.

18 **MS. FORD:** Only as to the --

19 **THE COURT:** Compensation planning guidelines.

20 **MS. FORD:** Yeah, as to damage computation is where
21 it comes in. It's what would he have earned had he been
22 allowed to remain in his position in California, where he would
23 love to still be working today.

24 **THE COURT:** If somebody's -- if your expert is going
25 to talk about that, then you're going to need to provide it to

1 her and allow a witness to testify about it. That's all I can
2 say. So this is kind of this caveat. I mean, if you don't
3 have any objection to having it extend through the present,
4 fine, go ahead and do it. It will solve a lot of problems
5 later. But if your damages expert is going to project, you
6 know, into the present using these guidelines, then you better
7 allow a 30(b) (6) witness to testify about it. That's my
8 suggestion.

9 Same thing for all of these -- these ideas. So I don't
10 want to dictate some rule that is then going to come back and
11 be a problem in the case, okay? All right.

12 So I think my concern about the scope and the time period
13 applies to 12, 13 and 14. So I don't think we need to talk
14 anything about those there. I understand that Apple will
15 designate a witness or witnesses as to all three.

16 With respect to the compensation system, number 15, I'm
17 not sure how that's different from number 10. I'm going to
18 assume that it's the same, and that Apple is going to designate
19 Mr. Kosti or Mr. Rastogi or someone else to talk about that.

20 And for all of these, where it is goes to other employees
21 in the group, not just Mr. Kannan, I think the broader date
22 period is relevant. So I made that remark at the beginning and
23 it continues to apply.

24 Okay, number 16, I'm not sure how Apple's compensation
25 planning is any different from an earlier topic we talked

1 about, but I see that Apple proposes to make a designation, so
2 I think we can move on from there.

3 Same thing with number 17, peer evaluation,
4 self-evaluation, I think that that's appropriate. Apple will
5 make a designation as to those.

6 Okay, organizational structure at Apple, I'm not even sure
7 I know what this includes. Is this another way of getting at
8 the question of who reported to whom?

9 **MS. FORD:** Yes, ma'am.

10 **THE COURT:** Okay, so this, it seems to me that just
11 like we had the discussion before, that the scope is
12 reasonable, but it's not an invitation or it's not appropriate
13 to inquire broadly about the organizational structure. If what
14 you're going to focus on is how many people reported -- of what
15 type reported to each of the eight people, that seems fine. So
16 if that's the scope, that seems appropriate.

17 Nineteen, how is this relevant, claims by employees other
18 than Kannan related to discrimination or reasonable
19 accommodation, either by internal investigation or agencies
20 like DFEH or EEOC? How is that relevant to any dispute in the
21 case?

22 **MS. FORD:** Well, first of all, there seems to be
23 a -- what -- a kind of a brick wall of, "no, we don't know too
24 much about these things," or "I don't remember" or "I don't
25 know" is --

1 **THE COURT:** What things?

2 **MS. FORD:** From -- I'm getting there -- from
3 management, when I ask them questions about their experience in
4 dealing with accommodating disabilities, and so I think if
5 there is a pattern or a problem at Apple in terms of
6 accommodating disabilities and people with disabilities in
7 their families, that that is -- is relevant.

8 **THE COURT:** All right. So Mr. Boyer, I didn't see
9 in your papers any specific objection to this topic, just a
10 notation that Mr. Carr had testified about it. So....

11 **MR. BOYER:** Actually, we did object to this, your
12 Honor.

13 **THE COURT:** Oh, did I miss that?

14 **MR. BOYER:** And we did have a discussion about it.

15 **THE COURT:** You mean you objected to it before it
16 got to me?

17 **MR. BOYER:** Correct, your Honor.

18 **THE COURT:** Okay.

19 **MR. BOYER:** And we believe that the topic's
20 irrelevant, and what counsel is referring to is she asked
21 Mr. Carr and Ms. Ramirez about specific investigations that
22 happened in 2003, '04 and '05, and at different companies and,
23 you know, or the investigations that they did 10 or 12 years
24 ago at Apple is not relevant at all, nor is the fact that they
25 can't recall a certain investigation that occurred 12 years ago

1 relevant, and it's....

2 **THE COURT:** Yeah, and I don't think this is relevant
3 to any issue in the case.

4 I do think that the training question, which is topic 24,
5 about training memos, notices related to prevention of
6 discrimination and reasonable accommodation, that is totally
7 relevant to the issues in the case and would allow you to
8 inquire about Apple's experience in -- again, limited to
9 this -- it's not, like, company-wide, but for this group,
10 about, you know, accommodating people with disabilities.

11 That seems -- but claims by other employees about
12 discrimination, that's way too broad and not relevant to the
13 issues in the case.

14 **MS. FORD:** Just one footnote. The questions
15 that I asked Mr. Carr had to do with his experience -- and
16 remember, he was the supposed neutral investigator of
17 Mr. Kannan's claims internally, and it was exploring just how
18 neutral he really is and how many times that he as an
19 investigator actually found in favor of the employee in terms
20 of a claim of discrimination.

21 **THE COURT:** That may be fine by way of talking about
22 someone's background and their experience and credentials, but
23 asking about particular times, by other employees, that's
24 really not --

25 **MS. FORD:** No, I was just -- I was trying to --

1 **THE COURT:** -- appropriate.

2 **MS. FORD:** -- clarify the question and answer
3 context that he --

4 **THE COURT:** Okay, that's fine.

5 **MS. FORD:** -- I was talking about.

6 **THE COURT:** Number 20 is the facts and circumstances
7 concerning other employees whom Apple takes the position were
8 in a situation comparable to Mr. Kannan's from 2011 to the
9 present.

10 Okay, so this one gave me some pause, because -- and
11 I think this comes up in other places as well. If Apple is
12 taking the position that there are other employees who were
13 similarly situated to Mr. Kannan whom it treated the same as it
14 treated Mr. Kannan, that seems to me something that should be
15 disclosed, if not in your initial disclosures, if not documents
16 in your initial disclosures that you're relying on, that at
17 least it's something that should be disclosed in the case, but
18 I can't tell from Apple's papers whether that really is the
19 position that you're taking, or whether Ms. Ford is just
20 hypothesizing that you may take such a position that there are
21 other employees out there in the world that are similarly
22 situated that you think are legitimate comparators, beyond the
23 eight.

24 So let me just pose the question: Are there such
25 employees and that Apple intends to take that position about?

1 **MR. BOYER:** No, your Honor.

2 **THE COURT:** Okay. Then I don't see any need to talk
3 about this.

4 **MS. FORD:** Well, the reason that I asked the
5 question, and I asked the question in an interrogatory also,
6 and I just get sort of objections and equivocations, I know
7 that Apple has said in general terms in this litigation, he was
8 treated the same as other people like him. There's plenty of
9 people that didn't get bonuses, plenty of people that didn't
10 get promotions, plenty of people that didn't get RSUs.

11 Okay, so who are these people? Because I think at some
12 point they're going to be telling us. Either they're going to
13 be trying to tell a jury, oh, there's lots of people who were
14 just like Kannan, he wasn't treated differently than other
15 people, or they're going to even point to specific people and
16 say, look, here's this person who was just like Kannan, and --

17 **THE COURT:** So if you've asked an interrogatory that
18 asked Apple to identify the people that he thinks -- people
19 that they think were treated similarly to Mr. Kannan, I mean,
20 the answer might be, it's like thousands of people in the
21 aggregate have this profile and were treated the same, see?
22 I mean, it could be like that, or it could be specific people.

23 An interrogatory is the appropriate vehicle to get that
24 information.

25 **MS. FORD:** Well, we may have to be in here over the

1 interrogatory. I sort of hate to do that, and --

2 **THE COURT:** I don't think it's -- given Mr. Boyer's
3 representation, what I just asked him about just now, I don't
4 think this is an appropriate deposition topic.

5 **MS. FORD:** Okay.

6 **THE COURT:** So we're going to leave it at that.

7 **MS. FORD:** As long as they're stuck with taking the
8 position that they're not going to be drawing any --

9 **THE COURT:** If things change --

10 **MS. FORD:** -- drawing any comparisons to other
11 people.

12 **THE COURT:** If things change, things change. I'm
13 not going to -- I'm not going to plan for things to change,
14 based on Mr. Boyer's representation.

15 **MR. BOYER:** Right, and to be clear, your Honor, you
16 said outside of the eight people. I mean, those are the
17 appropriate comparators, and to the extent that any of them
18 are, it would be the same team reporting to the same manager.

19 **THE COURT:** Okay, so -- and you're going to get
20 discovery about that, so -- all these deposition topics relate
21 to that group.

22 **MS. FORD:** Okay.

23 **THE COURT:** Number 21 is promotions, demotions and
24 transfers in or out of the group. I don't think there's an
25 objection to that. There will be a designee.

1 Promotions or job level changes for any employee reporting
2 to Kotni, again, no objections to that.

3 And when I say no objections, I'm basing it on what's been
4 presented to me in the submissions. So somebody needs to stop
5 me if that's not the case, but it looks like, for my decision,
6 there's no objection.

7 Number 23, any other employee reporting to Kotni who
8 requested a promotion, job level increase, and what happened as
9 a result, okay, there will be a designee on that.

10 Number 24, this is the training notices, et cetera topic.
11 There will be a designee on that one.

12 Okay, now we come to the final three, to which there is an
13 objection: Monitoring or review of Mr. Kannan's use of
14 equipment or systems, monitoring or review of Mr. Kannan's
15 activities, and any alleged violations of law or Apple company
16 policies by Mr. Kannan. I don't see how any of these topics
17 are relevant to any issue in the case.

18 So Ms. Ford, what's your best shot about why these are
19 relevant?

20 **MS. FORD:** Because Apple is now raising it in the
21 case, claiming that they did an intense review or search of his
22 computer in 2019, apparently both before and after but mostly
23 after his deposition was taken, and got a long, threatening
24 letter about how this violates the law and this violates Apple
25 company policies, and if they -- if Apple intends -- and

1 I asked Mr. Boyer a couple of times, can you assure me that
2 this issue is not going to be used as some justification for
3 taking adverse employment action against him presently, because
4 he still works for Apple; got no such assurances. He just
5 said, "Oh, well, you know, we're not going to fire you over a
6 discovery issue," but that's not really the answer.

7 The answer is, you know, if you suddenly decide he gets
8 testimony in a deposition and you suddenly decide that he's,
9 you know, done something that violated a policy, we think this
10 whole thing is another act of retaliation. The fact that they
11 searched his computer in a way that they don't search anybody's
12 computer -- they never do this, but all of a sudden they
13 targeted him and did this. The fact that they raised this huge
14 fuss about his private things, like his son's medical records
15 and his personal photos that happened to be on his laptop that
16 he then decided, you know, not to back up anymore --

17 **THE COURT:** Okay, before we get into the details of
18 that --

19 **MS. FORD:** But that's all retal- -- that's all
20 additional acts of retaliation.

21 **THE COURT:** Okay.

22 **MS. FORD:** If Apple wants to drop all of that out of
23 this lawsuit, I'd love to.

24 **THE COURT:** Okay. Let me just ask Mr. Boyer, does
25 Apple plan to use, for any purpose, including impeachment, the

1 monitoring or review of Mr. Kannan's use of his equipment in a
2 way that would violate company policy, any illegal activity by
3 Mr. Kannan using Apple equipment or any of these other things,
4 do you want to -- plan to use that in the litigation? In this
5 lawsuit, not some other lawsuit or some other action, but in
6 this lawsuit.

7 **MR. BOYER:** We would use it as a defense, some of
8 that, not worded in that way, but yes.

9 **THE COURT:** Okay. Well, then, why -- what's your
10 objection to having somebody testify about it, as a corporate
11 representative?

12 **MR. BOYER:** Well, so the issue isn't Apple's
13 monitoring or processes. We are using it as a defense in the
14 case. She's trying to -- counsel is trying to claim that this
15 is a retaliatory event. However, Apple has an obligation to
16 ensure that electronic data is retained, and we have an
17 obligation to defend the case, and if plaintiff's counsel -- if
18 plaintiff was doing things that would have gotten him
19 terminated, then we have a defense and it cuts off damages.

20 But also, it goes right to -- and this obviously goes into
21 our request for the deposition, but it also is directly
22 relevant to his claims in that some of the documents that we
23 found on his computer either directly contradict his deposition
24 testimony or contradict his testimony that he -- his manager
25 thought he was unavailable because he was at his son's

1 appointments and that's why he couldn't respond to certain
2 e-mails or requests in a timely manner. So in that regard, it
3 is relevant.

4 **THE COURT:** So is the dispute that the topic -- from
5 your perspective, the topic shouldn't be about monitoring or
6 review by Apple, but what are the things that Apple believes
7 violate company policy or things that would otherwise have been
8 terminal offenses had Apple only known about them while they
9 were happening; those are things that you think are fair game,
10 things that you plan to use in the case, things you plan to use
11 a defense or to impeach Mr. Kannan when he testifies?

12 You're prepared to provide a 30(b)(6) witness about those
13 things, but not about how Apple figured it out, what Apple did
14 to discover that information?

15 **MR. BOYER:** Some of it would be privileged, of
16 course.

17 **THE COURT:** Okay.

18 **MR. BOYER:** I mean, that's one of the issues as
19 well. I mean, to the extent that they want to ask what are the
20 normal processes in terms of backing up computers and things
21 like that --

22 **THE COURT:** Yes.

23 **MR. BOYER:** -- you know, if we're going to use it,
24 I suppose it is fair game.

25 **THE COURT:** So I think what Ms. Ford wants to find

1 out is, okay, Apple's normal process -- Apple has a policy that
2 says X. Normally, Apple doesn't go and look at every single
3 e-mail or text message a company uses, er -- an employee uses
4 company equipment to send, but we did in this case. Why?

5 All right, she wants to explore that point with you, with
6 your designee. So I'm trying to understand what the -- why --
7 if you're going to use this stuff, I'm trying to understand the
8 nature of the objection and why I should rule in your favor on
9 it or not.

10 **MR. BOYER:** Well, part of it is, of course, I think
11 there's going to be a privilege issue, but I think that the
12 company probably would be able to produce somebody that will go
13 through the normal process and how the data was collected with
14 regard to Mr. Kannan, like it would in any other other
15 litigation matter, so yeah, we can prove to somebody on the
16 jury.

17 But I am concerned that any -- we would have to have
18 somebody do an investigation and make a determination as to
19 whether or not any policies were violated, which almost puts
20 the company in a position of, are we going to have to take
21 disciplinary action if we find something.

22 **THE COURT:** I don't think that's what she's asking.
23 She says, "any alleged violations of law or Apple company
24 policies by Mr. Kannan." So if Apple is not presently saying,
25 Mr. Kannan, you violated company policy, or Mr. Kannan, you

1 violated a law and that we would have terminated you had we
2 known it at the time, and how we know, so, you know, your
3 damages are cut off, if that's your theory, I don't see why you
4 can't testify about -- have a witness testify about that.

5 So I don't understand the burden problem that you're
6 identifying. Like, what would the person have to do that would
7 be.... I mean, the policy is whatever it is. The person can
8 familiarize themselves with that. So what is the burden
9 problem?

10 **MR. BOYER:** Well, I don't think it's necessarily a
11 burden problem.

12 **THE COURT:** Okay.

13 **MR. BOYER:** It does put the company in a position of
14 having to make a determination as to whether or not somebody
15 violated a policy and then having to take action on it.

16 **THE COURT:** Yeah, so this presumes that you have
17 made a determination, that you have found something that you're
18 going to rely on that you're going to use. I'm not talking
19 about going forward or some other case or whatever. I'm
20 talking about in this case, do you plan to tell the jury, this
21 is what happened, that's what happened, you know, no way he
22 would have been promoted because of this, right? You know, if
23 that's what you plan to do, that's what I think she wants to
24 ask about.

25 **MR. BOYER:** Okay.

1 **THE COURT:** So without -- so it sounds like there is
2 some "there" there, in the sense of, you plan to use some of
3 this information in the case, in this case. So I'm not sure
4 quite how to crystallize these topics around that issue. It
5 sounds like it's still a little bit in flux.

6 Is there a pending interrogatory that seeks this, like,
7 seeks out these defenses that you say these might be relevant
8 to? Is there a pending interrogatory that asks you to identify
9 your defense? It may be that amending that, a response to
10 that, will then allow you to focus on what's really relevant to
11 the case, because it's not relevant to just find out what
12 Apple's going to do in the future and terminate his employment
13 or whatever. That's not really relevant. What's relevant is
14 what are they going to use in the case.

15 **MS. FORD:** Okay. Well, I would think that if
16 they're engaging in ongoing retaliation against him, it is part
17 of the case, but in any event, the other important piece to us
18 is what do they normally do, which it sounds like everybody is
19 kind of in agreement as to what is the normal.

20 **THE COURT:** Maybe, maybe not, but it sounds like --

21 **MS. FORD:** What if --

22 **THE COURT:** -- whatever is normal is something that
23 should be pretty easy for a corporate witness to testify about.
24 There's a policy, there's a practice. You know, again, not
25 company-wide, but relevant to this group.

1 **MR. BOYER:** And I agree with that, your Honor.
2 I think that's fine as a topic. Again, there's concern there
3 that it would reveal some litigation strategy because of
4 discussions that we've had, and this is usually not an issue
5 because generally, if -- employees that sue are not --
6 employees of the company, of course. This is the company's
7 data.

8 **THE COURT:** Sure.

9 **MR. BOYER:** It's the company's computers.

10 **THE COURT:** Yeah.

11 **MR. BOYER:** Everything that's on it is the
12 company's.

13 **THE COURT:** Yeah, and you probably have a policy
14 that says, we have the right to look at whatever we want.

15 **MR. BOYER:** That's right, and -- but I am concerned
16 that the topic itself is certainly going to intrude in
17 strategy, litigation strategy.

18 **THE COURT:** Okay, so if the problem is privilege or
19 work product, that's not really teed up for me. I will give
20 you an opportunity to tee it up for me, but you're going to
21 have to be specific about it.

22 So I think we need a process here for how we get to that
23 point. So among the agenda items when you go and talk to each
24 other, which I'm going to require you to do -- I hope you
25 brought your lunches -- I'm going to have you talk to each

1 other about these depos, and among them will be trying to
2 figure out whether there is a dispute about the scope of these
3 topics, and if there are, given the scope of the topics, if
4 there were privilege or work product issues that relate to
5 that, I'm going to ask you to brief that jointly, and we can
6 come up with a deadline for doing that, okay? Because I think
7 that's an important question, and it deserves attention.

8 Those are 27 topics. There are other issues related to
9 depositions that I think related to this, and these were
10 raised, as I said, in some other part of the briefing, the pile
11 of briefing that I got.

12 There are a number of deponents who I understand need to
13 still be deposed, not necessarily as 30(b) (6) designees, but
14 maybe some of them are. Kundar, Raja, Rastogi and Kotni; are
15 there any other Apple-related deponents whose deposition you've
16 already asked for, Ms. Ford?

17 **MS. FORD:** There were some that we asked for early
18 on, but I would think in light of where we are in discovery
19 right now, I'd rather pare that list down and stick with just
20 this group that are on that list.

21 **THE COURT:** Okay, so these four, we've already
22 talked about Rastogi and Kotni. What is Apple's position about
23 the depositions of Kundar and Raja?

24 **MR. BOYER:** So for Kundar, we were considering
25 making her one of the 30(b) (6) designees regarding

1 compensation. However, we believe -- you know, after
2 discussions internally and given the time line here, those
3 topics may be appropriate -- more appropriately covered by
4 Mr. Kotni and Mr. Rastogi.

5 **THE COURT:** Okay, and Ms. Ford, do you also seek her
6 personal deposition?

7 **MS. FORD:** Yes. She was listed as a witness, and
8 I can pull it up here, if you can give me a minute, in their --

9 **THE COURT:** That's okay, I don't need proof.

10 **MS. FORD:** -- in their disclosures --

11 **THE COURT:** Okay.

12 **MS. FORD:** -- and they give a description of what
13 she knows about, and my recollection, but forgive me if I make
14 a mistake on this, is that what she knew about was the stock
15 plans --

16 **THE COURT:** Okay.

17 **MS. FORD:** -- and that kind of compensation, which
18 is something that none of the other witnesses have really, you
19 know, as soon as you hit the point of how does all that work,
20 they knew nothing about it, so....

21 **THE COURT:** Okay, and then is Raja going to be
22 potentially a 30(b) (6) designee as well?

23 **MR. BOYER:** If they still want to continue with that
24 deposition, possibly, yes. Just based on the time line, he
25 would have been involved in the pre-Kotni management issues,

1 so --

2 **THE COURT:** As the prior manager immediate? And
3 he's also sought on a personal basis.

4 **MS. FORD:** Yes.

5 **THE COURT:** Okay, so it sounds like there are four
6 people who need to be deposed. From Apple's perspective, we're
7 going to get to Apple's motion to compel further deposition of
8 Mr. Kannan. Let me just get there.

9 Okay, let me just -- I'm going to let you argue this one
10 if you want to, but I'm going to just throw out a thought.

11 Ms. Ford, you may want to say, fine, Mr. Kannan will be
12 available for further deposition, since Apple is making all
13 these other people available for further deposition. I'm
14 suggesting you may want to do that as a way to avoid another 45
15 minutes of argument on this point. You don't have to, but it's
16 my suggestion. I'm just going to put it out there. It's the
17 last argument in my list, and we will get to it, and I have
18 questions for everybody about whether it's warranted or not
19 warranted or whatever, but I just throw that out there.

20 We don't even have to get to it. If you all agree that
21 these witnesses are going to be available for deposition, I'm
22 going to have you go in the back room and talk about a
23 schedule.

24 So you tell me: Do you want to argue about this one?

25 **MS. FORD:** I want to argue about it in the sense of,

1 you know, number one, I don't think it's fair for him to have
2 to travel for this one.

3 **THE COURT:** Okay, okay, so --

4 **MS. FORD:** Number two, I think it needs to be
5 limited --

6 **THE COURT:** Okay.

7 **MS. FORD:** -- anything would need to be limited in
8 duration, and it sure would have to be limited in scope. He
9 doesn't get to go back over all of the same things --

10 **THE COURT:** Okay, all right.

11 **MS. FORD:** -- that he asked before --

12 **THE COURT:** Okay. So we can go --

13 **MS. FORD:** -- and just get another bite out of the
14 apple, which so far that's what has been suggested to me is
15 that's what they intend to do.

16 **THE COURT:** We'll get to that one. That is my last
17 one. Let me get to the one that comes before that one.

18 But are there any other witnesses, besides these five,
19 that need to be deposed in the case? Fact witnesses, not
20 experts, but fact witnesses. Are those the five, Mr. Kannan
21 and then these other four?

22 Okay, all right. Okay, so the next one I want to talk
23 about is the one having to do with the protective order about
24 medical records. Okay, I'm hoping this one's going to be an
25 easy one to solve. You all have talked about this one. You've

1 worked out at least some portion of a stipulation having to do
2 with these.

3 Has anyone contacted the third party subpoena recipients,
4 these medical providers, and asked whether they can just
5 re-produce the limited set of information that Apple originally
6 asked for?

7 **MS. FORD:** I have contacted several of them, and one
8 of them actually contacted me to ask if he could do -- you
9 know, "Can I just take back what I did and redo it" --

10 **THE COURT:** Yeah.

11 **MS. FORD:** -- and Apple wouldn't agree to that.

12 **THE COURT:** Okay. So have you contacted -- since
13 these were your subpoenas, have you gone back to those folks
14 and said, can you just give me the stuff that has -- I forget
15 what all the issues were, but the dates of the appointments,
16 who attended the appointment, and any notations about the move
17 to India?

18 **MR. BOYER:** We have not, because counsel has not
19 allowed us to see any of that. She said without --

20 **THE COURT:** I don't care about seeing it. Calling
21 up -- on -- here's the original subpoena that asked for this
22 information. That's all you wanted in the first place, very
23 narrow, calling up the providers and saying, we understand you
24 produced the whole thing, the whole medical file. We don't
25 that. We want a subset.

1 Have you done that?

2 **MR. BOYER:** We have not, your Honor.

3 **THE COURT:** You must do that.

4 **MR. BOYER:** Okay.

5 **THE COURT:** Because the easiest solution to this
6 problem is having those folks produce it themselves. You don't
7 have to worry about whether you trust Ms. Ford's redactions or
8 whatever. You just get the providers to re-produce what you
9 asked for and only what you asked for, and then everybody's
10 happy. Okay? That's the solution to this problem.

11 I would like for you to report back to the Court -- let's
12 see -- by Friday about your contacting these folks and what the
13 response is. Doesn't mean they have to re-produce it by
14 Friday. Find out how long it will take them, but I want a
15 status report on this dispute from Apple on Friday. Okay.

16 So anything more we need to talk about on this one?

17 **MR. BOYER:** No, your Honor.

18 **THE COURT:** Okay. Related to that is this dispute
19 about the amendment to the protective order. That one only
20 came up in Apple's separate submission.

21 So Ms. Ford, do you want to address this question of what
22 an amended protective order should look like? And this would
23 be an amended protective order that has two tiers of
24 protection, an Outside Counsel or Attorney's Eyes Only tier for
25 information like this, and a Confidential tier.

1 **MS. FORD:** First of all, I don't think it's
2 appropriate to be discussing that even here, because it wasn't
3 ever part of any prior --

4 **THE COURT:** You guys are very close to being out of
5 time on discovery, so we are discussing it now. Here's your
6 opportunity to address this issue.

7 **MS. FORD:** Please let me finish, your Honor.

8 **THE COURT:** I am.

9 **MS. FORD:** Okay. There's actually been quite a bit
10 of back-and-forth and negotiation, and the last proposal was
11 very specific, detailed, here's what the language should say,
12 was me sending it to them a month ago, and I've heard nothing
13 since.

14 **THE COURT:** Okay. Here's what I'm going to do.

15 **MS. FORD:** They wanted to have a whole bunch of
16 additional language that I would not agree to.

17 **THE COURT:** This is not helpful, okay? I need to
18 know your position, not a litany of how the other side has not
19 cooperated. I don't want to hear that.

20 So here's what I'm going to do, unless someone tells me a
21 real good reason not to. I'm going to enter a revised
22 protective order that follows the model protective order of the
23 Northern District that addresses highly confidential sensitive
24 information. I'm going to do it exactly like that, with the
25 modifications that I always impose, based on my discovery

1 dispute resolution procedure.

2 That's what it's going to look like. Here's the
3 opportunity to argue the merits of that.

4 **MS. FORD:** Okay.

5 **THE COURT:** Last opportunity.

6 **MS. FORD:** I would like to be heard on that --

7 **THE COURT:** Okay.

8 **MS. FORD:** -- because there are two model orders,
9 and one of them is the one that Apple wanted to use, and it's
10 inappropriate here because it essentially, among other things,
11 gives them the ability to -- we can't -- essentially, we cannot
12 select an expert without getting their prior approval, so that
13 expert can look at the documents, the AEO documents. They get
14 to vet our experts, and we can't use them unless they agree to
15 it.

16 **THE COURT:** It happens in every case where you
17 disclose highly confidential sensitive information to an
18 expert. If you don't disclose highly confidential sensitive
19 information to an expert, you don't have to tell.

20 **MS. FORD:** But they designated everything, the
21 performance reviews, how many dollars these guys earned, all of
22 that stuff. So any economic expert that we would have -- and
23 that particular restriction, I swear, is designed for things
24 like, this is a trade secret software that we don't want our
25 competitors to find out about.

1 **THE COURT:** You know what, they may have no good
2 basis to make the objection, okay? So I will hear it. They
3 have -- you have a vehicle in a protective order for disputing
4 their challenge, and I would definitely expect Apple to not
5 dispute access by an expert unless there was a very good reason
6 to do that.

7 So you all have wasted a ton of time on this issue.
8 There's no reason to waste more time on it. So I'm going to
9 enter the standard order.

10 Is there another question besides the expert vetting
11 aspect of it, or another issue that you wanted to raise,
12 Ms. Ford, or is that the -- you said there were two issues.

13 **MS. FORD:** In the one they sent to me, there was
14 also -- we had negotiated a special protective order in this
15 case that had time limits that were different than the
16 standard's orders, you know, how soon did you have to object to
17 things.

18 As a matter of fact, if you just went in and reentered the
19 standard order now, I probably can't even object anymore,
20 because it probably has a time limit that's already passed for
21 objecting to things that they've produced back in June and
22 designated as Attorney's Eyes Only, so --

23 **THE COURT:** No, you can raise it at any time.
24 That's what the order specifically says. You can raise
25 objections to designations at any time.

1 **MS. FORD:** I cannot --

2 **THE COURT:** Here's -- here, let me just -- I'm going
3 to cut this short, because I don't want to waste any more time
4 on this. I'm going to give you all until close of business
5 tomorrow to submit a stipulated protective order that you all
6 agree you would like me to submit -- like me to sign.
7 Otherwise, I'm going to use the model protective order that's
8 on the court's website, and I will do that on Thursday. Okay?

9 All right. Now we're on to the question of the -- Apple's
10 motion to compel production of documents and a privilege log.
11 Okay. So this is a question for Apple. It's not clear from
12 the joint submission whether there are any documents being
13 withheld on grounds of privilege with respect to request
14 numbers 11 and 12, and those are the ones related to the DFEH
15 complaints, et cetera.

16 If I understand Ms. Ford's briefing, she says there aren't
17 any. She's produced everything. E-mails, the documents
18 attached to the e-mails, everything's been produced.

19 So let me just start there. Are there any documents that
20 are being withheld, that you understand are being withheld?

21 **MR. BOYER:** So these are slightly different issues.
22 The documents are not necessarily being withheld. They just
23 have not been produced, and what I'm talking about are
24 attachments to e-mails that were produced from the DFEH.
25 I don't believe that they're withholding them on a privilege

1 basis. I just don't believe that they've been produced along
2 with the e-mails.

3 So I've pointed out a few examples --

4 **THE COURT:** Oh, I see, okay.

5 **MR. BOYER:** -- to counsel. You'll see, like, you
6 know, a PDF attachment, and it's not there, and I've asked for
7 it, and that's the issue with regard to the DFEH file.

8 **THE COURT:** Okay. So Ms. Ford, let me get your
9 perspective. I understand your briefing to say you've produced
10 everything. So Mr. Boyer is saying, I have sometimes e-mails
11 that say here's an attachment and I don't have the attachment.
12 Okay, so what's your response?

13 **MS. FORD:** We have produced what we have, in the
14 format that we have it, and if he's got a copy of an e-mail
15 that doesn't have the attachment attached to it, that's just
16 the way that document exists. That's what he had.

17 Now, Apple already did a FOIA request to the DFEH and got
18 all of these e-mails with all of their attachments as part of
19 the hundreds of pages of response they got from that.

20 **THE COURT:** Okay, is that the case?

21 **MS. FORD:** And they've gotten the attachments and
22 the e-mails, and you can tell, you know, it says, "See
23 attached" and then, you know, it's somewhere else.

24 **THE COURT:** Okay, let me pause you there.

25 Is that the case, you have all the documents from the FOIA

1 request?

2 **MR. BOYER:** I have the e-mail, er -- have the
3 documents from the FOIA request. The way the DFEH actually
4 organizes them is that there's this chart with the text of the
5 e-mail and attachment, and you cannot tell where that
6 attachment is or whether that's complete or the dates don't
7 seem to line up. It's very confusing as to what is actually
8 being produced by the DFEH, and so that's why we've asked it
9 from them, because we want to match up the communications that
10 he provided with the communications that the DFEH has provided
11 us.

12 **THE COURT:** Okay.

13 **MR. BOYER:** I don't suspect that the DFEH file was
14 incomplete, but the way they produce it is very confusing in
15 terms of organization. For them I'm sure it works, but for us,
16 it's -- I can't tell which is which.

17 **THE COURT:** And is the problem mainly e-mails and
18 their attachments?

19 **MR. BOYER:** That's correct, your Honor.

20 **THE COURT:** So with respect to e-mails, was
21 Mr. Kannan using a personal e-mail account or an Apple e-mail
22 account or some other e-mail account in communicating with the
23 DFEH?

24 **MS. FORD:** I can't remember, but I think he was
25 using a personal e-mail account, but --

1 **THE COURT:** Okay, so as you know, I don't have to
2 tell you this, but you and your client's obligation in the case
3 is to, you know, go back to the source, and you can't just rely
4 on Mr. Kannan to give you stuff. You have to make sure that,
5 you know, you're satisfied that everything's been collected and
6 whatever. Same problem Mr. Boyer has, right?

7 **MS. FORD:** Yes.

8 **THE COURT:** So have you done that process, where
9 you've gone back and you've looked at the e-mail?

10 **MS. FORD:** I have not looked at his computer, and
11 I don't really know, because they haven't ever identified for
12 me, you know, what e-mail are you talking about? We've
13 produced thousands of pages of e-mails. Give me a Bates number
14 and, you know, I'll go and see if he can find that particular
15 one, but that hasn't happened so far.

16 But I do know we've given them all the e-mails, all the
17 attachments. I've asked my client twenty times. I haven't
18 personally searched his e-mail account, I've just asked him to
19 do it.

20 **THE COURT:** So can he give you access to -- I mean,
21 he's in India, so can he give you access to his personal e-mail
22 account to do the search yourself?

23 **MS. FORD:** I have no idea.

24 **THE COURT:** Okay, this is the challenge, and
25 I appreciate the challenge. You're here, he's there. But in

1 any case that involves ESI, the attorney actually has an
2 obligation not to just rely on the client. So you're going to
3 have to find some way to solve this problem.

4 My suggestion is that, Mr. Boyer, if there are particular
5 e-mails that you believe are missing attachments, you should
6 identify them by Bates number and send them in an e-mail to
7 Ms. Ford, and then she can go back and look for those specific
8 things.

9 This is not a project to go re-produce all e-mails. It's
10 a -- you need to problem-solve. If you really think these
11 e-mails are important, in light of what you have already via
12 FOIA, in light of what you've already produced, then send her a
13 list, okay?

14 And then you'll need to follow up on those particular
15 items, okay?

16 **MS. FORD:** Okay.

17 **THE COURT:** Now, are there any documents that you're
18 withholding on grounds of privilege relating to the first set
19 of requests for production of documents?

20 **MS. FORD:** Sure.

21 **THE COURT:** Okay, and that's your privilege log
22 that's attached as Exhibit A?

23 **MS. FORD:** Yes.

24 **THE COURT:** Okay.

25 **MS. FORD:** And these are, I would say, all of the

1 things that fall within the work product are stuff that was on
2 my client's laptop computer, the Apple laptop that they
3 searched.

4 **THE COURT:** Okay. So --

5 **MS. FORD:** That's why it refers to folders on that
6 computer.

7 **THE COURT:** All right. With respect to the
8 privilege issue, is it correct that the privilege log spans not
9 just the document production responsive to the first set of
10 document requests, but also the document production responsive
11 to the second set?

12 **MS. FORD:** You know, I would have to go back and
13 review exactly which, you know, requests go to what, but yes,
14 there is a single privilege log that would span --

15 **THE COURT:** Okay.

16 **MS. FORD:** -- anything that we would claim privilege
17 for that has come up in this lawsuit by way of discovery
18 requests. So we'll say that.

19 **THE COURT:** Okay. So this privilege log is not
20 adequate.

21 **MS. FORD:** Okay.

22 **THE COURT:** Okay? It's really not. I get the point
23 that there might be some documents that can be described
24 categorically and not listed in line items, but this is a far
25 cry from the reasonable particularity that the Ninth Circuit

1 requires.

2 *Burlington Northern* does not help you. That case is
3 actually very helpful in that it lays out the list of factors,
4 but if I go through the list of factors and consider the delay
5 in which this privilege claim was made and the descriptions
6 provided to me....

7 *Burlington Northern* says, you know, presumptively, this
8 log ought to allow the Court to make privilege calls based on
9 the description of the documents. I mean, I sure as heck can't
10 do that, and, you know, the delay in time that was at issue and
11 affirmed by the Ninth Circuit when the District Court said no
12 privilege, you've waived, was five months, okay? So we're way
13 past that too; so at least as to the first request.

14 So I wanted to go through the log and ask you
15 particularly, because I'm also sensitive to the question, or
16 the issue, that you both have mentioned, and I recall it coming
17 up, that the lawyers don't have an obligation to log their
18 communications with their client post-lawsuit -- I mean, post
19 the initiation of the lawsuit.

20 So I can't tell if that's what you're doing here for some
21 of these, whether you're logging your own documents, like, from
22 your own files, which normally isn't something that we do, or
23 whether what you're doing is you're -- and additionally, there
24 seem to be things on here that aren't even responsive to
25 requests, but I may be misreading it, because they're so high

1 level, the descriptions, that you're only required to log
2 documents that would otherwise be responsive to a request, not,
3 like, everything that your client has, whether it's responsive
4 or not.

5 So you may have created a bigger problem than really is
6 necessary here. So -- so I'd like to go through it.

7 **MS. FORD:** Okay. I would say that a big, big
8 difference in this case, which you haven't mentioned yet, is
9 they already have the individual documents in question. They
10 already have all of them, except for my stuff on my computer.

11 **THE COURT:** Okay, that may be --

12 **MS. FORD:** But all of the work product that --

13 **THE COURT:** Great.

14 **MS. FORD:** -- my client is talking about, they've
15 got copies of it. So they don't need detailed descriptions if
16 they've got it.

17 **THE COURT:** Then why are we -- then why is there --
18 then there's a privilege waiver, right? I mean, so I'm not
19 sure what we're talking about. So let's go through it, because
20 I don't think all of those refer to it.

21 **MS. FORD:** There may be a privilege waiver, but they
22 already have them. So it doesn't matter whether there's a
23 waiver or not. They've already got it.

24 **THE COURT:** Then fine. Then I'll find that it's
25 waived, it's not privileged, and it's produced and it can be

1 used in the litigation. If that's your position, I'm happy to
2 go with that and we don't need to belabor it, but I can't tell
3 from your log --

4 **MS. FORD:** Okay.

5 **THE COURT:** -- and you didn't raise it timely. So
6 this is the dilemma that we have.

7 **MS. FORD:** Well, we --

8 **THE COURT:** I do not want to find waiver
9 automatically by virtue of your delay. I'm giving you the
10 opportunity to address it, okay?

11 So the first item on your list is 2011 to the present --

12 **MS. FORD:** Hold on, hold on. Because I need to be
13 able to look at it myself, as well.

14 **THE COURT:** This is document number 110.

15 **MS. FORD:** Unfortunately, I don't -- I don't keep
16 them that way, but....

17 **THE COURT:** It's Exhibit A.

18 **MS. FORD:** Here it is. Okay, I believe I have it
19 here. Yes, okay. So --

20 **THE COURT:** The first item, the author is listed as
21 R Kannan, no recipients, "contents of folder marked 'case info'
22 on Raja Kannan's laptop," work product and litigation privilege
23 are claimed.

24 **MS. FORD:** Um-hum, yes.

25 **THE COURT:** Is there a dispute about whether that's

1 really work product? I mean --

2 **MS. FORD:** No.

3 **THE COURT:** -- Mr. Kannan is not a lawyer.

4 **MS. FORD:** Right.

5 **THE COURT:** Right?

6 **MS. FORD:** Um-hum. He -- go ahead.

7 **THE COURT:** I can't tell whether this encompasses
8 material he prepared at your direction.

9 **MS. FORD:** I would like to just explain it.

10 **THE COURT:** Okay.

11 **MS. FORD:** Okay. As far as I know -- and again,
12 there's a big overlap. There's descriptions here that say
13 contents of the folder, and that means the folder on his
14 laptop, and that -- those same documents are also going to be
15 described in other categories below. So there's an overlap.
16 This not a separate and distinct category different from the
17 other things that are listed, okay?

18 As far as I know, that folder includes his work that he
19 did *pro se* for the over-a-year that he represented himself in
20 this case, including the fact that he did research himself and
21 he contacted other attorneys other than myself long before he
22 hired me, and got, you know, advice and consultation from them,
23 and then he put together -- this would be, like, drafts of his
24 earlier motion responses. There were several motions to
25 dismiss, all of which he had to respond to. They were doing

1 case planning conferences and all that kind of stuff, and
2 that's the sorts of things, as I understand it, that is in that
3 folder.

4 I do not know the extent to which he put documents he got
5 from me into that folder. I can ask him that, but I think this
6 is primarily things that he generated while he was representing
7 himself in the litigation.

8 **THE COURT:** Okay. Let me do it this way. Let me go
9 through the privileges that are being asserted.

10 **MS. FORD:** Um-um.

11 **THE COURT:** So first of all, how many documents have
12 been withheld from production? And I don't mean how many
13 documents do you believe that Apple already has, but how many
14 documents have you not produced because there's a claim of
15 privilege that's reflected that this chart?

16 **MS. FORD:** I don't know.

17 **THE COURT:** Any estimate?

18 **MS. FORD:** No. I don't --

19 **THE COURT:** Have you seen it --

20 **MS. FORD:** I don't think there's very many, but
21 I don't know.

22 **THE COURT:** Have you seen the ones that are being
23 withheld --

24 **MS. FORD:** No.

25 **THE COURT:** -- that are encompassed by your chart?

1 Okay, you have an obligation to look at them. You also have an
2 obligation to make an adequate privilege log, and let me get to
3 what that would be, because your job may have just gotten
4 smaller when I tell you my view about what privileges are
5 applicable and likely their scope.

6 So first of all, I assume that you're asserting privilege
7 and work product and all that kind of stuff under federal law,
8 not under California state law, because you have federal claims
9 in this case.

10 **MS. FORD:** Yes.

11 **THE COURT:** Okay. All right, so I don't know what a
12 "litigation privilege" is, and there's nothing in your papers
13 that explains to me what litigation privilege is.

14 **MS. FORD:** Okay.

15 **THE COURT:** As far as I know, litigation privilege
16 is nothing.

17 Okay, so attorney-client privilege, that covers
18 communications between an attorney and his or her client for
19 purposes of seeking legal advice. You can communicate with an
20 attorney who's not your attorney and you're not their client
21 and chat about legal advice, and that is not privileged unless
22 there is an attorney-client relationship, and you are going to
23 need to make that showing if you contend that some subset of
24 these documents fall into that category when you were not
25 representing Mr. Kannan.

1 **MS. FORD:** I believe that the privilege does extend
2 to communications with people that you are exploring --

3 **THE COURT:** Yes.

4 **MS. FORD:** -- the possibility that they're going to
5 be --

6 **THE COURT:** Yes.

7 **MS. FORD:** -- your attorney, and that's the kind of
8 attorneys that I'm talking about.

9 **THE COURT:** If that's the case, that's legitimate.
10 If he interviewed attorneys, if he talked to them about his
11 case in anticipation of maybe they would retain him, you're
12 absolutely right. But if he, you know, had gone onto some
13 website blog and posing questions back and forth --

14 **MS. FORD:** No.

15 **THE COURT:** -- that's not, okay?

16 **MS. FORD:** That's not what we're talking about.

17 **THE COURT:** But you're going to need to make that
18 showing on a document-by-document basis, okay? Okay? So --
19 because I can't tell from the big lump of, you know, files on
20 the computer issue.

21 So the next thing is attorney work product. So 26 3 B --
22 26(b) (3), excuse me, is what governs our attorney work product
23 doctrine, and that covers the mental processes of the attorney.

24 **MS. FORD:** Actually, it says anything that's created
25 by a party in anticipation of litigation.

1 **THE COURT:** No. No, no, no. That is a total
2 misreading of that rule. So you are going to need to make a
3 showing about which documents.... I'm sure that Mr. Boyer is
4 not trying to get your files, and what might also be relevant
5 is if you instructed Mr. Kannan to do something, write
6 something for you, that might be your work product. That might
7 be an attorney attorney-client communication. But if
8 Mr. Kannan is doing things on his own and gathering stuff and
9 writing stuff without your direction, without your
10 participation, representing himself *pro se* does not make it
11 work product. That does not make it -- he is not a lawyer.

12 So I need you to --

13 **MS. FORD:** May I have the opportunity at some point
14 to submit a brief on that subject?

15 **THE COURT:** You will absolutely have to.

16 **MS. FORD:** Okay.

17 **THE COURT:** Because right now, you have not
18 supported your claim of privilege. This is what I'm trying to
19 tell you.

20 So if there is some law that you think applies and covers
21 a particular document that falls in this bucket, you are going
22 to need to tell me about it, because it's not in your papers
23 now and it's certainly not in your log. So I'm sharing with
24 you my view --

25 **MS. FORD:** Sure.

1 **THE COURT:** -- about the problem here, so that you
2 can address it.

3 **MS. FORD:** Okay.

4 **THE COURT:** And then, you know, I don't know if
5 there's really a dispute about spousal privilege here. It
6 doesn't sound like there is, but Mr. Boyer, you can tell me if
7 there is a dispute about what's being called "spousal
8 privilege." These -- I'm not even sure any of these categories
9 at the end are even responsive, but maybe they are.

10 I don't want to create more work than what we have to
11 address in order to resolve this problem, but your dispute is
12 not teed up, and this is a mutual problem that the dispute is
13 not adequately teed up, but you have the burden in the first
14 instance to establish a claim of privilege and you have not
15 done that. So I'm giving you another shot, as opposed to
16 finding waiver right now. It's kind of where we stand.

17 **MS. FORD:** Yeah.

18 **THE COURT:** Okay. Spousal privilege, is that an
19 issue?

20 **MR. BOYER:** I am not sure, because I don't really
21 know what these e-mail communications are exactly.

22 **THE COURT:** Okay.

23 **MR. BOYER:** So it's very difficult for me to make
24 any determination based on the complete vague nature of this.
25 I mean, when Apple did it, we did it line-by-line, e-mail by

1 e-mail, date by date, and I don't even know how many, you know,
2 e-mails or documents are even relevant here, whether the
3 privilege is going to apply at all.

4 **THE COURT:** Okay.

5 **MR. BOYER:** And that's some of the problem that I've
6 had with this line.

7 **THE COURT:** Right, okay. So sounds like you're
8 going to need to justify whatever you're claiming spousal
9 privilege on as well, since we can't tell from the description
10 here what that includes.

11 **MS. FORD:** What part?

12 **THE COURT:** Nine, 10, 11 and 12.

13 **MS. FORD:** Yeah?

14 **THE COURT:** Sorry, 8, 9, 10, 11 and 12. So keep in
15 mind, you only need to log things that are responsive.

16 **MS. FORD:** Yeah.

17 **THE COURT:** If they're not responsive, if there's
18 photos of someone's vacation, it's not responsive, I don't
19 think.

20 **MS. FORD:** They expressly asked for all documents
21 that reflect any travel by Kannan or his family to India, and
22 we're saying, if he had an e-mail with his wife about their
23 travel to India, that is a privileged spousal communication --

24 **THE COURT:** Okay.

25 **MS. FORD:** -- husband/wife, confidential, they're

1 here by date, there's a description of it --

2 **THE COURT:** Okay, then go ahead and log it.

3 **MS. FORD:** I don't know how much more you could put
4 in.

5 **THE COURT:** Well, like I said, I can't tell how many
6 there are. Maybe these are discrete documents.

7 **MS. FORD:** There's one, two, three, four of them.

8 **THE COURT:** So are these just discrete ones?

9 **MS. FORD:** They're 9, 10, 11, 12. Those are
10 individual documents.

11 **THE COURT:** Okay, these are just discrete documents?

12 **MS. FORD:** Um-hum.

13 **THE COURT:** I don't know why you would need those,
14 if those are discrete documents.

15 But here's the other thing. You all can submit it for *in*
16 *camera* review if there's not hundreds of them, but I need to
17 know how many there are and what the privilege is that's
18 claimed on them, and I don't have that information now.

19 I'm not sure the medical information privilege categories
20 that are at three cells, 5, 6 and 7, that may be resolved by
21 what we're going to do with the subpoenas to the third party
22 recipients. I don't -- I think that's your objection, but
23 correct me if I'm wrong, is that you don't feel that anything
24 else about Mr. Kannan's medical history should be disclosed
25 apart from the date information and these particular notes, is

1 that right?

2 **MS. FORD:** Yes.

3 **THE COURT:** Okay. So I don't think it should be
4 either. So if we resolve that, maybe that doesn't need to be
5 logged, but I'll wait to get your status report, Mr. Boyer.

6 **MR. BOYER:** I think that's fine, your Honor. We're
7 not asking for, and we've made it clear, we're not asking for
8 the diagnoses and things like that related to his son. Now,
9 the only thing we want are the dates of treatment and whether
10 his son is in the country or not, if that's noted in a record.
11 That's it.

12 **THE COURT:** Right. Okay, I got it. So otherwise,
13 I don't think we need to spend a lot of time on the privilege
14 log with that kind of stuff, because you're going to get that
15 from the third party recipient -- third party provider and, you
16 know --

17 **MS. FORD:** Well, there was also a good deal of
18 material on Mr. Kannan's computer about his son.

19 **THE COURT:** Okay. Let's just put it this way.
20 I don't think that each of those things needs to get logged if
21 Apple is saying it's not asking for that in discovery.

22 **MS. FORD:** Yes.

23 **THE COURT:** Okay, so that helps you there. All
24 right, so I will need a -- I will need a revised privilege log.
25 How quickly can you get that done?

1 **MS. FORD:** Given the detail that you've asked for
2 and the time difference between here and India, I would say it
3 would take me at least two weeks to put this together.

4 **THE COURT:** Okay, and you're going to need to look
5 at these documents as well. If I didn't make that clear,
6 that's my expectation.

7 **MS. FORD:** And how do I handle, your Honor,
8 documents for which we may be claiming work product privilege
9 but there may be also other objections to the same discovery
10 request which would also exclude that particular document and
11 cause us to withhold it from production?

12 **THE COURT:** And is that a dispute that hasn't been
13 resolved?

14 **MS. FORD:** Yeah, there's been no dispute resolution
15 at all concerning our objection, our written objections, to
16 their requests for production.

17 **THE COURT:** Okay, but has that been brought to me?

18 **MS. FORD:** No.

19 **THE COURT:** Okay. Well --

20 **MS. FORD:** No.

21 **THE COURT:** I don't know what to tell you. I mean,
22 if you object and Apple's, like, fine with your objection and
23 nobody's arguing, nobody's moved to compel --

24 **MS. FORD:** Right.

25 **THE COURT:** -- then you can conform your -- you

1 know, you can conform your privilege log to what is within the
2 non-objected-to scope, but if there's an objection that needs
3 to be resolved, then that potentially is going to change.

4 But normally, I mean, the way this works is if you say,
5 I'm asking for 10 years' worth of material, I object, I'm only
6 going to give you three years' worth of material, and the other
7 party is fine with that, then your privilege log encompasses
8 three years' worth of material.

9 **MS. FORD:** Okay.

10 **THE COURT:** But I mean, it boggles my mind that
11 we're a week before the end of discovery and there are still
12 things in dispute that haven't been teed up for resolution.
13 But we'll get to that. Okay.

14 So two weeks from today would be October 8th. You will
15 need to provide the privilege log to Apple, and then if there
16 is a dispute still, you look at the log and you say, you know,
17 I don't believe it, then -- or I don't accept those claims,
18 then you're going to need to brief that to me, and I have
19 special rules for you all about how you make your submissions
20 to me, which we will get to in a moment.

21 **MS. FORD:** That would be good.

22 **THE COURT:** The other thing is, Apple's motion was
23 kind of part privilege log and part, like, motion to compel
24 other stuff, which kind of threw me a little bit. I get the
25 privilege log spans two sets of document requests.

1 But Mr. Boyle, let me understand, although I think the
2 crux of your motion is about privilege, you also seem to be
3 complaining that with respect to Requests For Production 14,
4 15, 16, 18, 19 and 21, that Mr. Kannan has delayed more than a
5 month in completing production of those documents.

6 **MR. BOYER:** That's correct, your Honor.

7 **THE COURT:** Okay. Does that strike you as maybe a
8 little bit unreasonable and possibly hypocritical about
9 complaining about more than a month delay in producing
10 documents?

11 **MR. BOYER:** Well, I think the issue is, I don't have
12 any assurance that it's coming. That's the problem, I think,
13 and --

14 **THE COURT:** Have you talked about it, about when
15 Ms. Ford will be able to get you additional documents? Have
16 you had a conversation about that?

17 **MR. BOYER:** It's my understanding that they are not.
18 I don't believe that they're going to be producing anything
19 else. I'm not sure. The problem is that the way they draft
20 their responses is that they're going to produce things, and
21 then I don't know when it's coming or when it's being produced.

22 **THE COURT:** All right. So Ms. Ford, do you have
23 more documents that you plan to produce that are responsive to
24 those document requests?

25 **MS. FORD:** I need to take a quick look at them, so

1 that I may give you an accurate answer.

2 **THE COURT:** I think they're in Exhibit C.

3 **MS. FORD:** Do you remember the date that you sent
4 those?

5 **MR. BOYER:** Let me just (inaudible) this copy.

6 **MS. FORD:** Okay, so we're talking about 14, which is
7 all documents and text messages discussing, referring to or
8 supporting your decision to move to India.

9 **THE COURT:** Right.

10 **MS. FORD:** And basically, we sent a few e-mails that
11 sort of talked about, gee, we've moved to India. He doesn't
12 really have any written documents discussing his decision and
13 why he made that decision. That really is not something
14 there's a document on.

15 **THE COURT:** So I'm trying to avoid, like, getting
16 into every single one and just kind of asking the bigger
17 question, like, are there more responsive documents that you
18 are in the process of producing but haven't produced yet?

19 **MS. FORD:** The only thing I'm aware of is that
20 I asked my client to look and see if he could find -- which
21 I think -- I think they're completely irrelevant, but just to
22 solve the problem, you know, to try to work out some kind of a
23 solution, is they want to know for some reason the family's
24 whole travel pattern, you know, how often did you go to India
25 and how long did you stay there, for all the time he was

1 working there.

2 I think it's pretty much irrelevant but, you know, I've
3 asked him to see if he can find anything that would help one
4 determine that -- you know, work out what -- you know, what
5 days they came and went --

6 **THE COURT:** Okay.

7 **MS. FORD:** -- in terms of e-mails, e-mails and
8 stuff, discussing, "Gee, I'm working out of the country," or
9 "I'm in India right now on a business trip," you know, which he
10 took some business trips to India, too, that --

11 **THE COURT:** Okay, so you're planning --

12 **MS. FORD:** -- that's all been disclosed. The only
13 thing I can think of that's still outstanding is the business
14 about the, you know, do you have any travel records of any
15 kind, you know, do you have plane tickets, and I said I'm not
16 sure he's got any plane tickets --

17 **THE COURT:** Okay.

18 **MS. FORD:** -- but I'll have him look and see if he's
19 got anything that would be responsive that would help somebody
20 to backtrack and figure out when he was in India.

21 **THE COURT:** Okay. Great. All right, here's the one
22 that I thought was a problem, Request number 19. So Request
23 number 19 is,

24 "All documents concerning, reflecting or relating
25 to your wife's development of any mobile, web or

1 other software application during your employment
2 with Apple."

3 Now, I understand that you've asked the same question with
4 respect to Mr. Kannan particularly, and he's represented that
5 he will produce that stuff or has produced that stuff or
6 whatever. That seems relevant if the thesis is, you were
7 working on these applications when you were supposed to be
8 doing Apple's work and, you know, to the extent this factored
9 into our decision to pay you less, it was probably because you
10 were doing this other thing on the side.

11 Okay. What possible relevance does the wife's application
12 development have here?

13 **MR. BOYER:** Sure. I understand your question, your
14 Honor. The issue is that plaintiff has said that it wasn't him
15 that actually did the development of the apps, it was her,
16 although all of the information related to the apps was on his
17 log-in, on his Apple computer, and he's not -- he may actually
18 not have produced anything related to his development and
19 claiming she did everything.

20 So I believe, just based on review of some of those
21 documents, that they worked on it together, that he did have a
22 very significant part in doing it. In fact, there's video of
23 him demonstrating the apps, on a publicly available website,
24 and these have not been produced, and he can't hide --

25 **THE COURT:** What hasn't been produced?

1 **MR. BOYER:** Nothing.

2 **THE COURT:** Well, okay. So you have video you've
3 seen on publicly available websites. Okay, so you have that.
4 You have the information he has produced about the application
5 he did work on, right? There was one software application that
6 he worked on. That's what you all are telling me.

7 **MS. FORD:** Yes, but that was for Apple.

8 **THE COURT:** Okay.

9 **MS. FORD:** That was for Apple, and we produced
10 documents about it.

11 **THE COURT:** So, and the reason that you think that
12 there is information, or there is information on his laptop
13 that suggests someone worked on his laptop developing a
14 non-Apple-related software application is because of the access
15 that Apple has to what's on his laptop.

16 **MR. BOYER:** Correct.

17 **THE COURT:** Okay.

18 **MR. BOYER:** And other information that we've seen on
19 the internet, correct.

20 **THE COURT:** Okay. So now we get to the point of
21 talking about this laptop and the stuff that Apple has access
22 to on the laptop.

23 Do you have -- does Apple have a backup of the laptop that
24 reflects what was on it before Mr. Kannan's deposition in May?

25 **MR. BOYER:** No, we don't.

1 **THE COURT:** Why not?

2 **MR. BOYER:** So what we have is a targeted backup
3 prior to the deposition. So that would include various
4 folders, which Mr. Kannan may or may not have selected. So the
5 way Apple's program works is that employees -- I believe it's
6 called a crash plan -- can select various folders to back up.
7 The entire computer is not actually backed up.

8 And so what happened was we took -- we've taken regular
9 snapshots, as Apple does in all litigation, as part of, you
10 know, its obligation to retain electronic information, took the
11 snapshot on April 227th, and then another snapshot on,
12 I believe, May 7th or 8th, and those were different in that a
13 lot of these folders now, which have been disclosed on the
14 privilege log, are missing.

15 **THE COURT:** Okay.

16 **MR. BOYER:** Plaintiff's counsel tells me that he
17 just deselected it from backup. I don't know the answer to
18 that because I don't physically have his computer, and in any
19 event, the entire backup never included the entire hard drive
20 on the computer. So there's folders but there's also files,
21 there's also data that would not necessarily be backed up, such
22 as deleted files that you have to actually physically have the
23 hard drive to look at.

24 So there's a lot of different information that I don't
25 really know whether I have and I don't know whether there was

1 some attempt made to not produce it to us.

2 **THE COURT:** Okay. So I think this kind of bleeds
3 into the last -- well, partly it bleeds into the last topic as
4 well, but I'm really troubled by this dispute in the sense that
5 Mr. Kannan absolutely has an obligation to preserve
6 electronically stored information relating to the lawsuit,
7 whether it's on an Apple-owned piece of equipment or his own
8 personal computer, and what really bothers me is that it sounds
9 like you as his lawyer have never examined these devices or
10 seen them. They've constantly been in his possession, and
11 there hasn't been, unless you told me I'm mistaken, any effort
12 to preserve. There hasn't been any effort by Mr. Kannan to
13 preserve it.

14 Apple is telling me that while they have the ability to
15 capture and did capture copies of what was on the computer, it
16 depends on not only their program but the files that Mr. Kannan
17 has chosen to select, or has not deselected, for backup.

18 So, you know, ESI is something you all are supposed to
19 talk about at the beginning of the case. Your obligation
20 doesn't depend on that conversation, but that's why we have
21 that obligation that you talk about it.

22 So now we're in the situation where Apple is telling me
23 that there is information that they don't have that they think
24 got changed, moved, deleted, whatever, and you're telling me
25 that you don't have access or copies or whatever to this

1 information yourself. So I'm not sure how the Court is
2 supposed to resolve this for you.

3 So let me hear from Ms. Ford first about this dilemma.

4 **MS. FORD:** The first issue is what he just said.

5 Gee, before his deposition in May of 2019, we did these backups
6 and here was the list of folders. After that date, some of
7 those that were backed up before aren't there anymore.

8 So first of all, that means they've got those backup
9 copies. That's how he could determine that something wasn't
10 there later, is because he's got the copy from before.

11 Now, my client also said he backed up everything. No, not
12 the program files. You know, the Word program doesn't get
13 backed up, or what pages are --

14 **THE COURT:** Wait, Mr. Kannan did his own backup of
15 what was on his computer?

16 **MS. FORD:** No, he did it on -- Apple, yeah,
17 requires, once a week or something, employees all have to back
18 up their computers, and he did them.

19 **THE COURT:** Is that different from what you're
20 describing? I don't understand what the difference is between
21 an employee backing up all of his files and the program that
22 Apple runs.

23 **MS. FORD:** I don't know what he's describing, but
24 I'm describing what my client said that he does, and that he
25 backed it up, at least once a week, sometimes once a day --

1 **THE COURT:** Does he have access to that?

2 **MS. FORD:** -- everything. No, he doesn't -- unless
3 he's backed it up, he can't go look in the archives. Only
4 Apple can go and look in the archives.

5 But back up a little bit. So what is it that he
6 supposedly did? It doesn't -- just because there is not a
7 backup after his deposition of a given file doesn't necessarily
8 mean that it was deleted even from the computer --

9 **THE COURT:** No, I'm not talking about that. That's
10 not really -- I'm not really worried about, Mr. Kannan did or
11 did not do something nefarious. What I'm trying to figure out
12 is whether there exists a universe of documents that can be --
13 that contains responsive information for purposes of discovery
14 that has not been adequately reviewed and produced. That's
15 kind of the bottom line.

16 **MS. FORD:** Yeah.

17 **THE COURT:** So you say Apple has it already. They
18 say no, we don't, because they only have access to certain
19 folders and they only had access to certain folders at one
20 period of time, and now there is a smaller subset of folders
21 at, you know, time two.

22 So that's what I'm trying to understand, is what actually
23 exists, who has it, and whether you object. It sounds like you
24 do object to them accessing it. So this is the problem.

25 **MS. FORD:** Yeah, according to my client, he has

1 backed up all of his files, or all of his, you know,
2 information files, data files I guess they call those, not the
3 programs but the data files, at least once a week the whole
4 time he's been there. If Apple does some additional backup,
5 that's fine too, but that he's backed up absolutely everything.

6 But at some point -- and he does this, he also says,
7 regularly, probably weekly -- he deletes a bunch of stuff, just
8 because it's old or because it's a family photograph, or maybe
9 he'll take off one photograph of his kid and put on a different
10 one, and that that's -- there's nothing wrong with that. That
11 happens all the time.

12 **THE COURT:** Okay.

13 **MS. FORD:** But here, nothing was destroyed, and
14 Apple doesn't have anything to suggest that anything was
15 destroyed. Even if he took it and put it on a CD, that's
16 preserving it.

17 **THE COURT:** Okay, here's their problem, is --

18 **MS. FORD:** He doesn't necessarily need to keep
19 backing it up to the Apple computer.

20 **THE COURT:** But they say you haven't produced it to
21 them. So if this happens -- hypothetically -- if Mr. Kannan
22 said, "You know what? These files are cluttering up my system.
23 They relate to the litigation. I'm not going to destroy them,
24 I'm going to move them onto a CD." Then Apple is concerned --

25 **MS. FORD:** Okay.

1 **THE COURT:** -- that you and your client have not
2 reviewed and produced all responsive information. That's the
3 problem, and it's not really an answer in that situation to
4 say, well, Apple, you have it all anyway.

5 **MS. FORD:** Okay. Now, that's a different question.

6 **THE COURT:** That's the question I'm trying to get at
7 here.

8 **MS. FORD:** Okay, and that one is pretty easy to
9 answer. No. We have withheld documents pursuant to objection,
10 including attorney-client privilege objection, but we haven't
11 certainly destroyed anything, and like I said, counsel has not
12 come to me with anything to discuss any of our objections that
13 we made to their requests for production of documents.

14 So no, are we hiding something? Absolutely not. And do
15 I know that? Yeah, as much as one can ever know that. I mean,
16 I don't follow my client around 24/7, but yes, I know that as
17 much as one can know that.

18 **THE COURT:** If we're talking about, just for lack of
19 a better example, the files that relate to this question of
20 on-the-side software development that you think Mr. Kannan
21 engaged in with his wife and that was done on his computer,
22 what evidence do you have of that happening already, besides --
23 that's not these YouTube videos or whatever, but that you found
24 on the computer or on the backup files from the computer? What
25 is that?

1 **MR. BOYER:** The specific files that we found?

2 **THE COURT:** You found some -- what kinds of files
3 are they?

4 **MR. BOYER:** Yes, your Honor. So they were all in a
5 development folder, which he had specifically had listed --
6 we're talking about 10,000 files in there -- of various
7 spreadsheets related to -- one of the apps was called something
8 Misheard Word, where it's essentially the individual tried to
9 fill in the word that was misheard, but it's like a
10 conversation app, essentially. A lot related to that, the
11 various conversations that were uploaded to the app.

12 A lot of small files that would include, like, graphics
13 files that were included in the app, quite a few, and I've
14 tracked it down to about three specific apps, which were in
15 development from about 2012 to 2014, maybe early 2015, around
16 that time frame.

17 **THE COURT:** Okay.

18 **MR. BOYER:** So those are just what we know about,
19 but also, he's got personal accounts -- those could be thumb
20 drives and things like that -- which contain -- potentially
21 could contain all of this information.

22 Like, for example, his Gmail account, I have only seen
23 e-mails related to his DFEH application out of his Gmail
24 account and some employer applications that he had, and the
25 problem is that we don't know what else is out there, but we've

1 seen all of this and we're not getting anything back, even
2 though we (inaudible).

3 **THE COURT:** So it seems to me like it is reasonable
4 for Apple to assume that if there is application development
5 work done on an Apple computer, that -- and since I'm assuming
6 the wife is not an Apple employee, that there's a reasonable
7 basis to think that Mr. Kannan was at least involved in the
8 development of that, and they have an opportunity to discover
9 and inquire about those applications.

10 He may have a perfectly -- well, maybe not perfectly
11 innocent, but an innocent-ish explanation for why his wife was
12 developing applications on his computer, if that's what he says
13 happened. But it certainly seems that Apple ought to
14 investigate that.

15 So what am I missing?

16 **MS. FORD:** Well, one thing that you're missing is
17 that I -- we don't know. We've asked several times for Apple's
18 attorneys to tell -- tell us specifically what's on
19 Mr. Kannan's laptop that you think reflects this kind of
20 activity, and we will easily be able to explain to you what it
21 is, but they haven't ever done that. They've never given us an
22 explicit, you know, here's the file, here's the file that we
23 think shows this.

24 Second of all, yes, his wife, on occasion -- let's put it
25 this way. I'm not savvy enough with computers to explain

1 exactly how it worked, but some of the activity that they're
2 talking about was his wife doing her -- doing her own work.
3 It's not him. That's his wife doing work on these
4 applications, not him.

5 But if they could just identify for us what, you know,
6 what folders, what documents that they think reflect all of
7 this information that Todd was just mentioning, which is all
8 news to me, then, you know, we could try to figure out if
9 there's something there, but as it is, I can't do it.

10 **THE COURT:** I don't think that's really what Apple's
11 asking. They're not asking for you to explain to them why what
12 they found is innocent. I mean, they can go and ask Mr. Kotni
13 in a deposition -- talk about that too, maybe they can -- you
14 know, to explain what these file folders are.

15 What they're asking for is, we think there are other
16 application development folders on Mr. Kotni's (sic) Apple
17 computer that reflect work that is non-Apple work. That's
18 really what they're asking.

19 **MS. FORD:** You mean Mr. Kannan.

20 **THE COURT:** Mr. Kannan, I'm sorry. Who did I say?

21 **MS. FORD:** Kotni.

22 **THE COURT:** Excuse me.

23 **MS. FORD:** Which was wrong.

24 **THE COURT:** Mr. Kannan, thank you very much. So
25 I don't think, as phrased, Request For Production number 19 is

1 right. You're not really interested in what his wife did.
2 What you're interested in is application development work
3 that's reflected on his Apple computer, and that to me seems a
4 totally legitimate thing to ask about, because he's the only
5 one who should be having access to this Apple computer, and if
6 there were any files that were stored on there that reflect
7 application development by anybody, or removed and put
8 someplace else but used to be on that computer, I think you're
9 entitled to get that stuff.

10 And like I said, you can ask him, and he can explain what
11 that is, but inquiring about what the wife did, like, out of
12 the box, doesn't seem like -- that's really beyond the scope.
13 I mean, you don't really care what she did. You care what he
14 did. That's what you -- that's what you're going to
15 demonstrate at trial, you hope, is that he spent a lot of his
16 time doing something that wasn't related to his job.

17 **MR. BOYER:** I think that's accurate, your Honor.
18 The reason that we added the -- drafted them in the way we did
19 is because we kept getting pushback that he didn't do it, he
20 didn't do it and his wife did it, and therefore, we wanted to
21 actually see the files and see who was doing it.

22 It's not just limited to what's on his computer. There
23 could be another computer where he worked on it, he worked on
24 the files, and the issue is still relevance, right? It's still
25 relevant to the issues in this case, and that is whether he was

1 doing something else instead of caring for his son, which he
2 claims.

3 **THE COURT:** That's fine, and you're entitled to ask
4 about other work that he was doing, and I am fully expecting
5 that he will be candid with you, because, you know, he and
6 Ms. Ford will be in a lot of trouble if they don't -- they're
7 not candid about that kind of stuff. So I have every
8 confidence that Mr. Kannan and Ms. Ford in particular as an
9 officer of the court will make sure that if there is some work
10 that he did stored elsewhere, that that will be disclosed.

11 Okay, but it doesn't seem to me that you're entitled to
12 ask about all of the wife's application development work.
13 That's just -- you can't ask it that way. If it's on the
14 computer, the Apple computer, that's your hook.

15 So I think number -- Request For Production 19 can't --
16 you can't pursue that one in that scope. I will only allow a
17 more limited scope, which is -- it's application development
18 work where the file was on the computer at some point.

19 **MS. FORD:** And I would suggest that it needs to be
20 limited in time. I don't certainly think that anything he or
21 his wife did in this regard in 2019 has anything to do with why
22 he got the job reviews he got while working for Mr. Kotni prior
23 to 2017. It would have to be something that he did while
24 reporting to Kotni between 2013 and 2017. What they're doing
25 today is really not pertinent to this case at all.

1 **THE COURT:** Yeah, so long as you're not going to
2 claim that it relates to damages. So anyway, there's a sort of
3 end -- since he's still unemployed, there's this weird,
4 ambiguous portion. You're arguing for broader when it suits
5 your purposes and, you know, obviously, Apple would argue for a
6 broader scope on the tail end when it suits their purposes. So
7 hard for me to know about that.

8 Let me look at the text of the -- is it --

9 **MS. FORD:** The request itself is --

10 **THE COURT:** Is it time-limited?

11 **MS. FORD:** No, it's totally open-ended. It doesn't
12 talk about, could have been before he went to work and....

13 **THE COURT:** Okay.

14 **MS. FORD:** Certainly could be.

15 **THE COURT:** At a minimum, it has to encompass the
16 dates when he worked for Mr. Kotni, okay? At a minimum. And
17 if there is reason for you to believe that it continued on, we
18 can revisit that question, or continued application development
19 work continued on. If he testifies in deposition that, yeah,
20 he continued to work on this, and is still working on it or
21 whatever, then maybe we'll see, because maybe it does impact
22 damages.

23 **MR. BOYER:** The only caveat I have to that, your
24 Honor, is that some of the work began in 2012, it looks like,
25 and so I'd like to include that. So I put that, I'm okay with

1 not going back to January 1st, 2011, but, er -- January 1st,
2 2012 through the end of the time he worked with Joe Kotni is a,
3 I think, a reasonable limitation.

4 **THE COURT:** Okay, let's do that, January 1st, 2012
5 through the end date of his time with Mr. Kotni. That's just
6 number 19. That's the one that caught my attention. You all
7 haven't crystallized your dispute as to the scope of production
8 for all these other things, unfortunately, so I'll give you
9 some guidance on how to deal with that going forward.

10 But as to the privilege log, my decision on this one is
11 that there needs to be a showing in support of the privilege
12 log, and that privilege log needs to be provided on October 8th
13 to Apple, and then I will entertain any further briefing that
14 we need to -- on those particular claims at that time.

15 It sounds like there are still documents to be produced
16 here and there on the second -- the second set of requests for
17 production of documents that were enumerated, 14, 15, 16, 18 --
18 I'm going to skip 19 -- and 21. Based on what you said, there
19 are some things you're looking for about the travel?

20 **MS. FORD:** Like I said, the only thing would be --

21 **THE COURT:** How quickly can that be provided?

22 **MS. FORD:** I don't know. I'll talk to my client
23 about it. Maybe, again, we'll give it that same two-week limit
24 there?

25 **THE COURT:** Okay, it sounds like it's very limited,

1 so I'd ask you to do it as soon as possible.

2 **MS. FORD:** Okay.

3 **THE COURT:** Because we're now going to turn to the
4 question of further deposition of Mr. Kannan.

5 So Mr. Boyer, how long -- for how many hours did
6 Mr. Kannan testify during his deposition on May 1st?

7 **MR. BOYER:** Seven hours.

8 **THE COURT:** It was a full seven hours?

9 **MR. BOYER:** Yes, your Honor.

10 **THE COURT:** Okay, and what documents had you asked
11 for as of that date that you did not receive until afterwards?

12 **MR. BOYER:** So there were certainly some files from
13 the DFEH that we still haven't received in terms of the
14 attachments. I had actually not completed the deposition.
15 There were a number of e-mails that I still needed to get
16 through. It was a pretty significant amount of data that we
17 had to get through.

18 Also, we did not get an audio record that we had requested
19 as part of our first request for production. It's about 18
20 minutes. It seems like it's him and another employee at Apple
21 discussing compensation. It would have been nice to have it to
22 go through at his deposition as well.

23 **THE COURT:** So this is Request For Production 13,
24 which encompassed whatever was listed in the initial
25 disclosures?

1 **MR. BOYER:** Correct, your Honor.

2 **THE COURT:** So those are the two categories of
3 information.

4 **MR. BOYER:** Those are the main categories, yes, your
5 Honor. I don't think there's anything else that we listed
6 there.

7 **THE COURT:** Okay. So those are pretty -- it sounds
8 like that's pretty limited. I mean, I don't know how extensive
9 this audio recording is, but it sounds like you had the bulk --
10 did you have the response to the FOIA request from DFEH by the
11 time you took Mr. Kannan's deposition?

12 **MR. BOYER:** I did, your Honor, yes.

13 **THE COURT:** Okay. So it sounds like, apart from a
14 few things that may still not be produced, it's pretty limited
15 what you did not have before you took Mr. Kannan's deposition.

16 **MR. BOYER:** In terms of the documents, at least at
17 this point, based on RFP and initial disclosures, that's
18 correct.

19 **THE COURT:** Okay. So you haven't made a motion for
20 more time, in the sense that -- you have asked for further
21 deposition, but what I'm trying to articulate is, sometimes in
22 a situation where there is just kind of too much to get through
23 with a particular witness, we get a request, either I get a
24 request or Judge Davila will get a request for, you know, an
25 opportunity to exceed the seven-hour limit.

1 And Ms. Ford, I noticed that you've put in your papers
2 Apple had every opportunity to continue questioning Mr. Kannan
3 on May 1st but chose not to do so. I wasn't really sure what
4 you meant by that.

5 **MS. FORD:** Because he had already traveled there
6 from India, and even though he had finished his seven hours, we
7 were not jumping up, pounding the table and saying, "Your seven
8 hours are up." I certainly would have let him ask additional
9 questions for another hour --

10 **THE COURT:** I see.

11 **MS. FORD:** -- or so, without kicking up much of a
12 fuss. I mean, I just normally do that, to be collegial.

13 **THE COURT:** All right, I just wanted to understand
14 what that was about.

15 **MS. FORD:** And also, they had the opportunity at the
16 time to ask for more than one day of deposition, which they
17 didn't.

18 **THE COURT:** I understand that, and so this is the
19 problem I'm trying to solve right now, because it sounds like
20 Apple is seeking -- Apple is clearly seeking more time with
21 Mr. Kannan. I'm not convinced that you have a lot of -- a lot
22 left to do based on just the information that you sought before
23 his deposition not being produced on time. So it seems like a
24 pretty limited set of information.

25 So let me just ask a question. How long do you think you

1 need with Mr. Kannan for a further deposition?

2 **MR. BOYER:** Assuming I can get through the remaining
3 documents, probably three hours.

4 **THE COURT:** Okay, and Ms. Ford, does Mr. Kannan have
5 any plans to be in the United States for business or personal
6 reasons in the near future?

7 **MS. FORD:** No. He would make -- he would need to
8 make a special trip, thousands of dollars, two weeks of time --

9 **THE COURT:** Okay, okay, I just need the answer to
10 the question. Okay.

11 All right, what I'm contemplating is, I'm contemplating
12 allowing the further deposition of Mr. Kannan, and I actually
13 had in my notes that I thought three hours would be reasonable,
14 and I wasn't going to limit you to just the stuff -- three
15 hours is your limit, in other words. Three hours, whatever
16 you're going to do, three hours, that's it. Okay? You would
17 have to use your time wisely.

18 But I was going to see if we could arrange for Mr. Kannan
19 to appear by video; so videoconference the deposition. I know
20 nobody likes that. It's not in Mr. Kannan's interest to do it
21 that way either, because you won't be sitting with him, unless
22 you're planning to fly to India. So it's not a desirable thing
23 all around, but I'm trying to be mindful of the fact that this
24 is his second deposition, he would have to travel a long time,
25 he is the plaintiff in the court, but he's already been here

1 for one deposition.

2 So what I was wondering about is whether -- I think a big
3 concern here is whether you have good quality facilities for
4 having a good quality videoconference. So somebody just
5 sitting on their laptop doing Skype, you know, via India, may
6 not be great.

7 So my question is, does Apple India have videoconferencing
8 facilities that might be suitable for this purpose? Because if
9 it does, we could just require Mr. Kannan to go there and do it
10 via -- and, you know, make it sort of easy for Apple to
11 communicate with him. It would be an Apple system and, you
12 know, no IT problems, hopefully.

13 So that's my question. I'm happy to -- I don't want to
14 dictate the terms of this, but I want to ensure that it's good
15 quality videoconferencing.

16 So Mr. Boyer, your thoughts on that.

17 **MR. BOYER:** So I don't necessarily have an objection
18 to it. The problem is, it's a legal issue, and I've looked at
19 taking a deposition in India --

20 **THE COURT:** Yeah.

21 **MR. BOYER:** -- before, and it's a jurisdictional
22 issue. You've got to get a -- in order to really bind somebody
23 through deposition in India, although I know he's subject to
24 the jurisdiction of the court, the problem is he's in India.
25 You have to actually get a commission. It's a big process in

1 order to --

2 **THE COURT:** Even if the deponent consents?

3 **MR. BOYER:** That I don't know.

4 **THE COURT:** See, that's the thing here, is --

5 **MS. FORD:** You have a court reporter here.

6 **THE COURT:** -- Mr. Kannan -- no, no, I totally get
7 Mr. Boyer's point, but -- and I know it's jurisdiction-
8 specific. I don't know for India at all, but whether if the
9 deponent consents, whether you avoid those kinds of objections,
10 because I'm trying to find -- trying to find a way how to
11 accommodate the interests.

12 I do think that Apple is entitled to further deposition
13 and, you know, I do think that videoconference, while it's not
14 great, it's acceptable, if we can do it without having anybody
15 violate any laws.

16 So I'm going to ask you to go figure that out. I'm going
17 to put the onus on the both of you to do that jointly, because
18 it's in your interest, Ms. Ford, I think, to ensure that
19 Mr. Kannan doesn't have to travel here, but -- so I would like
20 for you to work on this together.

21 So if you find law that you think says it's possible and
22 you find law that you think says it's not, then maybe you can
23 exchange thoughts about that and then report to the Court, as
24 soon as you can, about it.

25 **MR. BOYER:** Yes, your Honor.

1 **THE COURT:** And I'm open to other possibilities. It
2 doesn't have to be this way, but I'm open to other
3 possibilities, but I do think that Apple should get an
4 additional three hours with Mr. Kannan. Okay.

5 **MS. FORD:** Will they be limited in scope to what
6 they can ask about?

7 **THE COURT:** No, he can ask whatever he wants in the
8 three hours, because there was -- and this includes whatever
9 else is out there, okay? So it's -- I'm taking -- I'm not
10 going to parse the subject matter. It's limited in time.
11 Three hours, that's it. Okay? And no more than three hours,
12 okay?

13 All right. I think I've gone through all of the disputes
14 that you all have that have been teed up for me. Is there
15 anything that I missed, that someone thinks I need to address
16 specifically?

17 And I will issue a written order with the outcomes, based
18 on this -- what we've gone through so far, but I've indicated
19 as we've gone along what I think the relevant scope of various
20 topics are and who should do what when.

21 There's some follow-up that will trigger other orders when
22 you report back to me, there will probably be some other
23 decisions that I have to make, but I think I've addressed all
24 of the disputes that you all have, save for what we do about
25 your discovery deadline and the remaining depositions.

1 **MS. FORD:** And the expert.

2 **THE COURT:** Do you all agree? So let's just go to
3 that issue. So as you know, I can't relieve you from any of
4 your case management deadlines. Only Judge Davila can do that.
5 You have five depositions collectively that remain to be taken,
6 and some of those may be half-day depositions. Certainly
7 Mr. Kannan's would be a half-day. I don't know if some of the
8 30(b)(6) witnesses can be combined, you know, but five, five
9 people, who will need to be deposed.

10 **MS. FORD:** Plus the 30(b)(6), yeah.

11 **THE COURT:** There's no way you're going to get that
12 done by Monday. So what is the plan, before you got here, what
13 is the plan for dealing with that issue? Have you all talked
14 about it?

15 **MR. BOYER:** We're going to need to sit down and come
16 up with a schedule, I think, your Honor. That's the only way
17 to hammer this out.

18 **THE COURT:** Okay. And you know you're going to need
19 to address -- I assume that you're proposing that you all can
20 agree on a schedule. That's what you're suggesting?

21 **MS. FORD:** Do you think that, like, 30 days will do
22 it?

23 **THE COURT:** You know, part of it is, you all have --
24 you know, there's a whole pile of things that are being --
25 maybe it's a small pile, but at least it's somewhat of a pile

1 of things that you claim are privileged and Mr. Boyer saying
2 are not privileged, and that would need to be produced.

3 So once I resolve that, there's yet more production
4 coming, potentially. Okay? So your schedule is going to need
5 to anticipate some of those things.

6 There's some documents that Apple is producing as a result
7 of this discussion, and you have people who I assume don't have
8 unlimited time in their schedules who also need to be deposed.

9 So what I am suggesting is, since I have you here captive,
10 one of the things you should do when you talk about when
11 different witnesses are going to be available for deposition,
12 which I'm going to require you to do, is you can also talk
13 about how much time you need for schedule, and if you disagree,
14 that's fine. You can propose different things to Judge Davila,
15 but you're going to need his permission, and he might not say
16 yes.

17 So what I'm trying to do is kind of help you get to a
18 point where you can actually make the ask you need to make of
19 Judge Davila, because you're going to need to ask for more time
20 if you both want to get your discovery done, it sounds like.

21 **MS. FORD:** Yeah, and --

22 **THE COURT:** Yes?

23 **MS. FORD:** I was just going to say that my guess is
24 that it's going to be pretty hard to sit here today and come up
25 with a schedule for the depositions, but --

1 **THE COURT:** Well, you're going to have to -- you all
2 don't talk to each other otherwise. So you're here, so you
3 should at least make a first step. Maybe there will be some
4 follow-up, but I think you -- you're going to need to talk to
5 each other about it, and you have access to your phones and
6 your e-mail. You can work on it. Okay? I mean, you should
7 have done that before we got to this point. You should have
8 figured out when your witnesses were available for deposition
9 by now, mainly an Apple issue, but, you know, if Mr. Kannan has
10 constraints, you should know about those, so that we can
11 schedule it.

12 Because you all have been having this issue fester for
13 months, and nobody's, like, put any dates down, as far as I can
14 tell. So no time like the present. You should start working
15 on it.

16 Let me -- so let me do two things. It's -- I have a 1:30
17 calendar, so here is what I'm going to do. I'm going to tell
18 you how I plan to handle your discovery disputes going forward,
19 and then I'm going to let you go eat, and then I invite you to
20 come back, and you can hang out in my jury room and you can
21 talk about these things, and then if you've reached something
22 that's an agreement that you want to talk to me about and you
23 want it to be a record of the court, we can talk about it, and
24 we can come back in here and go on the record and you can put
25 whatever stipulation you agree to on the record.

1 **MS. FORD:** And this would be concerning what?

2 **THE COURT:** Depositions, the remaining document --
3 this document issue that you all are going to talk about from
4 the very first issue that we -- there was some document that
5 you said showed X, you said no, it doesn't show X, this is a
6 question of when people got their RSUs. I think you should
7 talk about that, but mainly I want you to focus on deposition
8 scheduling and I want you to focus on your case schedule, what
9 you can agree on or not, in front of Judge Davila.

10 If you can't agree, that's fine, but I want you to take
11 the time to talk about it, and I'm going to make my jury room
12 available for you to do that. And then if you need me to come
13 back out and help you memorialize something, I'm happy to do
14 it, okay? Or if you decide that some discovery dispute
15 that I still have to decide here is no longer an issue because
16 you all have reached agreement on it, great, we can take that
17 off my list. Okay?

18 So I'm inviting you to talk to each other while you're
19 here. Actually, I'm requiring you to talk to each other while
20 you're here.

21 But let me tell you about how we're going to go through
22 with discovery management. I will put this in my order as
23 well.

24 I am concerned about the lack of cooperation. I talked to
25 you all about this last time; didn't have much of an impact, so

1 I'm going to talk to you about it again.

2 So my standing order provides that a conference of lead
3 counsel has to take place within five court days of someone
4 saying, "I want a conference of lead counsel on X dispute,"
5 unless you mutually agree to not -- to do it some other time,
6 and then the joint submission is supposed to take place within
7 five court days of the lead conference of counsel.

8 It is rare that I am confronted with parties who can't
9 manage to do that. It's 10 court days to get a dispute to me.
10 So I don't....

11 So special rules, just for you. Here there are. The
12 conference of lead counsel must take place within three court
13 days of the demand for a call. After the call, the party who
14 wants the Court to act has to provide its portion of the joint
15 submission by 5:00 p.m. on the second day after the conference
16 of lead counsel. So you have the call on day one, you have day
17 two, you have day three. That's the second day after. That's
18 when you provide your portion of the joint submission.

19 The opposing party provides its portion of the joint
20 submission on the fourth day following the call, so two days
21 after, okay?

22 The first party then gets to revise its portion of the
23 joint submission by 11:00 a.m. on the fifth day after the call
24 of counsel, and the opposing party can revise its portion of
25 the joint submission by 4:00 p.m. The first party makes no

1 further revisions to its submission except to correct typos or
2 something like that, and files the joint submission on the
3 fifth court day after the call of lead counsel. That's how it
4 works.

5 So I've micromanaged how you exchange your portions of the
6 joint submission. I will put this in writing.

7 If any party fails to comply in any material way with this
8 guidance, that party or its counsel will be subject to
9 sanctions, including an adverse determination on the matter in
10 dispute.

11 Again, I will put that in writing, and hopefully, there
12 will be no ambiguity, but that's how we'll manage discovery
13 disputes going forward, if you have any.

14 Okay. Any questions?

15 **MR. BOYER:** No, your Honor. Thank you.

16 **THE COURT:** All right. So when you come back -- I'm
17 going to let you go off to lunch. When you come back, please
18 just check in at the clerk's office, let Ms. Cromwell know that
19 you're here and that you'd like to come into my jury room, and
20 we can let you in there, and the subject matter is what I said
21 before. You're mainly talking about deposition scheduling and
22 case management scheduling, but feel free to use the time to
23 resolve anything else while you're there. Okay?

24 I know it's been a long morning. I appreciate your
25 participation and your good faith in trying to get through all

1 this.

2 **MS. FORD:** I really appreciate the amount of time
3 you've spent on this stuff, your Honor.

THE COURT: Okay, you're very welcome.

5 MS. FORD: You're terrific. Thank you, your Honor.

6 THE COURT: All right, thank you.

7 MR. BOYER: Thank you, your Honor.

8 THE CLERK: Court's in recess.

1:23 p.m.

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CERTIFICATE OF TRANSCRIBER

I, Leo Mankiewicz, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

S. lot. b. Park -- 09/27/2019

Signature of Transcriber

Date